



# SHOULDERING THE BURDEN

How Free Trade Affected the  
Livelihoods of Women in Mexico

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AND ORGANIZATIONS PROGRAM  
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# Acronyms

AMLO	President Andrés Manuel López Obrador
CAB	Conciliation and Arbitration Board
CBA	Collective Bargaining Agreements
CDMX	Ciudad de Mexico (Mexico City)
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CROM	Regional Mexican Workers Confederation
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CROC	Revolutionary Workers and Peasants Confederation
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
FDI	Foreign Direct Investment
FENASIB	National Federation of Banking Unions
FSTE	Federation of Unions in the Service of the State
GATT	General Agreement on Tariffs and Trade
GBV	Gender-Based Violence
GDP	Gross Domestic Product
HRDs	Human Rights Defenders
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
INE	National Electoral Institute
INEGI	Instituto Nacional de Estadística y Geografía (National Institute of Statistics and Geography)
IPV	Intimate Partner Violence
IMSS	Mexican Social Security Institute
INE	National Electoral Institute
ISI	Import Substitution Industrialization
CTM	Mexican Workers Confederation

MFN	Most Favored Nation
MORENA	National Regeneration Movement
MSN	Maquila Solidarity Network
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NAOs	National Administrative Offices
NAP	National Action Plan
NEET	Not in Education, Employment, or Training
NGO	Non-governmental organizations
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
PAN	National Action Party
PRI	Institutional Revolutionary Party
RTA	Regional Trade Agreement
SDG	Sustainable Development Goal
SEDESOL	Secretary of Social Development
STEM	Science, Technology, Engineering and Math
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UPR	Universal Periodic Review
USMCA	United States-Mexico-Canada Agreement
UN	United Nations
UNGP	United Nations Guiding Principles
VNR	Voluntary National Review
WEF	World Economic Forum
WTO	World Trade Organization

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# Executive Summary

Trade theory predicts that developing economies converge with developed economies as they open up to trade. This convergence occurs in terms of gross domestic product (GDP) and wages. Mexico has experienced increased wealth and access to technology since opening its economy through international mechanisms, most notably the North American Free Trade Agreement (NAFTA) in 1994. However, Mexico's economy has not converged with the U.S. and Canada or kept up with the social development of many of its less wealthy Latin American counterparts. Although there has been an overall increase in GDP, the gains have been unevenly distributed, and have not done enough to correct the economic disparity that exists in the country. This lack of convergence is evident when examining the human rights situation of women working in Mexico, especially in the *maquiladoras*—factories that manufacture goods for export. Although trade liberalization improved labor-market access for working-age women in Mexico, these women are not necessarily better off nearly three decades later.

The *machismo* culture in Mexico acts as a compounding factor, emphasizing gender stereotypes and corresponding obligations which weigh heavily on women. These domestic expectations, in addition to long and inflexible working hours, leave women taking on a *doble jornada*—a double shift—one at home and the other at work. This burden, coupled with hiring and workplace discrimination, as well as a significant gender wage gap, leave women unrewarded and underpaid, or in the case of women who work at home, entirely unpaid. The case of working women in Mexico calls for an examination of trade law from a gendered human rights perspective in order to analyze the distribution of its benefits among different groups. Ultimately, this report aims to understand the intersection between trade, human rights, and women by looking through the lens of women who work in the maquiladora sector.

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This report contains eight parts. Part I describes political and economic history with a focus on labor rights and trade liberalization. It goes on to discuss the relevant legal framework at the domestic, regional, and international levels, as well as voluntary commitments. Part II focuses on applied economic theory to establish the framework with which to analyze the relationship between free trade and working women in Mexico. Part III provides an overview of the protection gaps in Mexico that affect the ability to safeguard the rights of working women in the country. In that respect, this part covers generalized insecurity, violence, corruption, as well as limitations of the state's capacity and willingness to enforce the law. Furthermore, it includes a discussion of private sector efforts to close the aforementioned protection gaps. Part IV introduces some of the gendered cultural and structural barriers which hinder the rights of working women in Mexico. The most prominent barrier discussed is that of the *doble jornada*, a phenomenon in which women are expected to perform paid work outside the house and are then expected to put in unpaid hours at home—whether through domestic work, child care, or elderly care. Part V addresses the case study of women working in the *maquiladora* sector. Trade liberalization brought employment opportunities for women in this sector, but not without a cost. This part goes on to address issues of wage inequality, lack of social mobility, and lack of access to leadership positions. It further discusses gender-based discrimination in the workplace concerning harassment and pregnancy, as well as health and safety. Part VI addresses governmental, civil society, and private sector efforts to combat gender-based discrimination, particularly in areas directly or indirectly related to jobs prospects. Part VII briefly concludes on the need for a gender perspective and due diligence in free trade agreements. It goes on to highlight how the double shift—a phenomenon framed by societal norms and expanded due to the opportunities brought by free trade—limits women's advancement. This part further emphasizes the continued presence of gender discrimination in em-

ployment, an issue that is exacerbated by the lack of capacity or willingness of the Mexican government to enforce labor laws. Next, this part discusses both the hope and challenge for the rights of working women presented by the AMLO administration. Lastly, the conclusion proposes that it is an opportune time for Mexico to examine the situation of working women due to the need to combat gender discrimination, the changing free trade landscape in North America, and the importance of women's labor participation to economic development.

Finally, Part VIII offers policy recommendations for both the short and long term. The short-term policy recommendations firstly include extending paid parental leave. Concerning maternal leave, extending it could bring Mexico on par with other OECD countries, as well as provide women with more choices. When it comes to paid paternal leave, increasing it may help combat the traditional role of women as the primary caregiver. It may further decrease gender discrimination in hiring, as any prospective parent, regardless of sex, would cost a company the same amount money. Secondly, the report recommends that Mexico institute a higher penalty for social security violations to deter companies from denying workers this constitutionally recognized benefit. Thirdly, Mexico should increase the number of labor inspectors as well improve transparency of inspections. Invariably, to have proper labor enforcement, a state must have an adequate number of well-trained labor inspectors. The sixth recommendation attempts to increase awareness of human rights and remediation options through the use of informational programs directed towards working women in Mexico. This is an area where the Mexican government and civil society should work in tandem to create tailored outreach mechanisms. In a similar vein, the seventh recommendation calls for information-sharing in the form of gender-sensitivity training for law enforcement. This training may encourage more women to come forward and allow authorities to more adequately respond to gender-based violence. Mexico can draw upon experiences from the international community to design these programs. The final short-term recommendation is for Mexico to mitigate the adverse effects of free trade on human rights with special attention to women. One tool in which they could accomplish this goal is a human rights impact assessment.

Furthermore, the report details five long-term recommendations. The first is to establish gender-sensitization programs in school with the thought that textbooks and lessons that do not reinforce gender stereotypes will help promote gender equality. The second recommendation advises for an increase in consultations with a diverse set of stakeholders prior to entering into trade agreements. This would correct some of the issues with a top-down process like the one Mexico used in committing to NAFTA. Along the same lines, the third recommendation recognizes the need for a gender lens and explicit gender language in future trade agreements. To ensure that women are not left behind by free trade, a gender perspective would promote inclusive economic growth in Mexico. The fourth recommendation advocates for an increase in female participation and leadership roles in unions. This would better reflect the Mexican labor market and represent the interests of working women. Finally, the last long-term recommendation calls for Mexico to continue and expand its efforts of gender mainstreaming at all levels of government and across political, economic, and legal frameworks. This mainstreaming would prevent the official reinforcement of gender stereotypes and would invariably combat structural barriers to the advancement of women.

Finally, the report presents recommendations to the private sector—an essential actor in realizing the rights of women working in the *maquiladoras* in Mexico. The first recommendation advocates for MNCs to increase their use of third-party firms that conduct social compliance audits. This audit would allow companies to monitor the working conditions at their Mexico-based factories and suppliers and to respond accordingly. This action would help close the current protection gaps caused by the limited labor enforcement capacity of the Mexican government. The second private-sector recommendation calls for changes to corporate governance to both promote a gender balance in management and prevent sexual harassment. The last recommendation highlights the need for safe and secure travel to and from work. The private sector should reach out to their employees to assess transportation risks and meet safety requirements with special attention to the experience and needs of women.







# Methodology

## Design and Sampling

The report is the culmination of a year-long academic research course through Johns Hopkins University – Paul H. Nitze School of Advanced International Studies (SAIS). The research team is composed of nine graduate student researchers with concentrations or minors in international law and organizations, international economics, Latin American studies, and conflict management, as well as one professorial lecturer in the SAIS International Law and Organizations Program. The study design is exploratory, using qualitative methods including interviews, to examine, understand, and describe the intersection between free trade and human rights in Mexico. The case study has a specific focus on women working in the *maquiladoras* sector. Along with the literature review and desk research, the interviews and field research provide the basis for the findings and policy recommendations in this report.

During the fall of 2018, the team began studying the broad theme of the relationship between free trade and human rights in Mexico. Initial research involved scanning a wide array of relevant literature and documents on the topic from international organizations, governments, civil society, and the media. After nearly a month of initial research, the team drafted competing research proposals. In consultation with a group of experts, the proposal was narrowed down to focus on the rights of women workers. Subsequently, the research was further focused on the *maquiladora* sector. Initially, further research sites were planned, but it was ultimately decided to concentrate on Mexico City in an effort to narrow the scope of research.

The desk research included conducting background consultations with experts, identifying relevant actors, attending local events on the issue, and speaking with country representatives at the Embassy of Mexico in Washington D.C. By November, the team developed a questionnaire meant to guide semi-structured interviews in the field. Through December and January, the team planned for in-country fact-finding, establishing local contacts and arranging interviews with key stakeholders.

The team split into two groups. One group traveled to Mexico City the week of January 7, 2019, and the second group began interviewing in Mexico City on January 18, 2019. Due to resource and academic schedule constraints, the teams could not spend more than one week in their locations. As stated, the groups used a purposive sampling method to arrange interviews with key stakeholders, although the snowball method was used to find additional contacts while in-country. These interviews followed a strict ethical protocol described in the “Sample Description” section below. Interviews were conducted during the week, generally lasting approximately one hour. Some interviews were in English and some were in Spanish, requiring translation from team members. In total, the researchers conducted over 19 interviews with experts in the field.

The team returned to Washington to analyze the data collected. Groups gave presentations summarizing their data. Throughout the spring semester, the teams continued to conduct research and follow-up interviews with stakeholders. Individual team members drafted sections of the report, which were cross-edited. To ensure credibility and accuracy, the draft report was sent out to research participants and additional experts for comments and certification of citations. The team then made further edits and drafted the final report.

## Sample Description

During each meeting, a research team member explained the project, the research goals, and requested informed consent. Interviewees gave express consent to be included in the study and indicated whether the meeting could proceed on the record. An audio recording was not used but, when allowed for, researchers took written notes. The research was determined to present no more than minimal risk to the professional participants as the risks associated with participation were no greater than those encountered in daily life. Nor were members of the following populations recruited for interviews: children (younger than 18 years old), Johns Hopkins University students, Johns Hopkins University employees, emancipated minors, wards of the state, individuals with cognitively impaired/impaired decision-making capacity, pregnant women, critically ill or injured patients, or prisoners.

In late January, the research team returned to Washington, D.C. and analyzed the meeting notes to ensure consistency, accuracy, and to flag items for follow-up. Subsequently, informed by follow-up communications with meeting participants and further desk research as necessary, researchers jointly developed this report. In April, a draft version of the report was circulated to all individuals with whom the team had met throughout its study to solicit feedback. Comments from all those who responded were duly incorporated into the final version of the report. On May 16, 2019, the research team will publish the report and present its findings and recommendations to the public at the Johns Hopkins University School of Advanced International Studies in Washington, D.C.

## Research Limitations

This report is limited in scope. Firstly, it focuses on a formal sector of the economy, rather than the informal. Second, though NAFTA had a noticeable impact on the agricultural sector in Mexico, especially in the South, we did not focus on that sector due to a lack of information. There was a significant amount of preexisting information on the maquiladora industry, which made it a more feasible case study.

Furthermore, due to resource and academic schedule constraints, team members could only spend a limited amount of time conducting in-person interviews. These constraints restricted the number of interviews conducted as well as the geographical area covered. As such, with the interviews limited to Mexico City, the report does not recognize any distinctions among states or urban/rural divides. The most significant limitation is the lack of interviews with women working in the maquiladoras in Mexico. Personal interviews were not possible due to logistical and resource constraints. However, we recognize the irreplaceable value of direct testimony from women working in the maquiladoras in Mexico to ensure a robust understanding of their experiences and needs. Despite those limitations, team members arranged meetings with a variety of stakeholders in government, civil society, the private sector, and international organizations.

Finally, this report focuses broadly on women. As such, it does not distinguish between experiences among populations with increased vulnerabilities, such as indigenous populations, Afro-Mexicans, and migrants, among others. We recognize that these populations may have added difficulties and threats to their human rights.





**While the primary objectives of trade and human rights law differ, trade is increasingly codified alongside human rights in regional trade agreements.**

# PART I

## Background







## A. The Relationship Between Human Rights and Trade

International trade and human rights law can be seen as at odds with one another. Though trade can certainly create a climate in which human rights are better protected and promoted, the stipulations of the World Trade Organization (WTO) do not explicitly mandate respect for human rights in trade relations. The rights promoted under the WTO include the rights of exporters to enjoy their property, freely enter into contracts, fairly compete on the basis of non-discrimination in relation to like industries both foreign (most favored nation treatment) and domestic (national treatment), and, finally, the right to the free movement of goods and services across borders. However, according to the former Director-General of the WTO, Pascal Lamy, “human rights and trade rules, including WTO rules, are based on the same values: non-discrimination, individual freedom and responsibility, transparency, and welfare through peaceful cooperation

among individuals.”<sup>1</sup>

Regardless, the primary objectives of trade and human rights law differ. The WTO system aims to “produce certain market conditions which would allow this individual [business] activity to flourish” by reducing barriers to trade.<sup>2</sup> On the other hand, human rights law seeks to define, guarantee, and protect economic, political, social, civil, and cultural rights and freedoms. Despite these differing objectives, trade is increasingly codified alongside human rights in regional trade agreements.

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1 Pascal Lamy, ‘Towards shared responsibility and greater coherence: human rights, trade and macroeconomic policy’ (Speech at the Colloquium on Human Rights in the Global Economy, Co-organized by the International Council on Human Rights and Realizing Rights, Geneva, 13 January 2010) [https://www.wto.org/english/news\\_e/sppl\\_e/sppl146\\_e.htm](https://www.wto.org/english/news_e/sppl_e/sppl146_e.htm)

2 World Trade Organization. “United States—Sections 301–310 of the Trade Act of 1974,” WTO doc. WT/DS152/R (22 December 1999) (Report of the Panel) para 7.73. [https://www.wto.org/english/tratop\\_e/dispu\\_e/wtds152r.pdf](https://www.wto.org/english/tratop_e/dispu_e/wtds152r.pdf).



Beginning in the 1980s, the United States, along with other developed countries, began incorporating non-binding human rights language in regional trade agreements (RTAs). Today, other major trading nations like Chile and Brazil also include human rights language in their RTAs.<sup>3</sup> The human rights endorsed in these agreements can include due process, access to information, labor rights, privacy, indigenous rights, and political participation, among others. The growing inclusion of human rights in these bilateral and multilateral free trade agreements reflects an emerging norm in trade relations and the acknowledgement by policymakers that effective economic integration necessitates good governance.<sup>4</sup> Despite this growing intersection of trade and human rights, few academic studies have focused on examining the effects of free trade agreements on human rights in the countries party to these agreements. This report attempts to address this gap in the research through an examination of the human rights of working women in Mexico today, in the context of NAFTA and Mexico's current socio-political and economic situation.

## B. Political History

To fully understand Mexico's current sociopolitical and economic situation and how it affects gender dynamics, it is necessary to provide a brief historical context. This section will stress critical events that relate, whether directly or indirectly, to the development of labor rights and the economic liberalization of the country. In this regard, this section will highlight the provenance of Mexico's progressive labor laws, the rule of the Institutional Revolutionary Party (PRI), the political liberalization of Mexico, and the current political context under President Andrés Manuel López

Obrador (AMLO).

Drafted in the context of the Mexican Revolution (1910-1920), which was spearheaded by workers, the 1917 Constitution provided robust labor protections.<sup>5</sup> To this day, it is considered one of the most progressive constitutional documents of its time because of its inclusion of individual guarantees and its emphasis on human rights.<sup>6</sup> Furthermore, it was the first national constitution to incorporate significant labor protections in its text.<sup>7</sup> Its pioneering social provisions were a response to the demands of two decades of social unrest during the revolution.<sup>8</sup> As such, the new Constitution positively transformed Mexican society by providing a framework of social protections that previously did not exist. Its legacy is exemplified by the fact that, despite some reforms, it continues to govern Mexico over a century since its inception and is the longest-standing constitution in Latin America.<sup>9</sup>

Article 123 of the Constitution is one of the most critical sections and continues to be the subject of periodic reforms. Throughout its 30 subsections, Article 123 added a labor and social welfare dimension that was nonexistent within previous Mexican constitutions.<sup>10</sup>

5 Brian R. Hamnett, *A Concise History of Mexico*, 2nd ed. (Cambridge: Cambridge University Press, 2008), 214-215.

6 "The Mexican Constitution: Young at 100," Mexico Official Website, Federal Government of Mexico, March 2, 2017, <https://www.mexico.mx/en/articles/the-mexican-constitution-young-at-100>.

7 William Suarez-Potts, "La Constitución de 1917 y la Ley Federal del Trabajo de 1931," in *Cien Ensayos para el Centenario. Constitución Política de los Estados Unidos Mexicanos*, ed. Gerardo Esquivel, Francisco Ibarra Palafox, and Pedro Salazar Ugarte, vol. 3 (Mexico City: Universidad Autónoma de México, Instituto de Investigaciones Jurídicas, and Instituto de Belisario Domínguez, 2017) 429-448, <https://biblio.juridicas.unam.mx/bjv/detalle-libro/4320-cien-ensayos-para-el-centenario-constitucion-politica-de-los-estados-unidos-mexicanos-tomo-3-estudios-economicos-y-sociales>.

8 Alicia Hernández Chávez, *Mexico: A Brief History*, trans. Andy Klatt (Berkeley and Los Angeles: University of California Press, 2006), 232.

9 "The Mexican Constitution: Young at 100," Mexico Official Website

10 H. N. Branch and L. S. Rowe, "The Mexican Constitution of 1917 Compared with The Constitution of 1857," *The Annals*

3 Susan Ariel Aaronson and Jean Pierre Chauffour, "The Wedding of Trade and Human Rights: Marriage of Convenience or Permanent Match," World Trade Organization: Discussion Forum, (2011). [https://www.wto.org/english/res\\_e/publications\\_e/wtr11\\_forum\\_e/wtr11\\_15feb11\\_e.htm](https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_15feb11_e.htm).

4 J-P Chauffour and J-C Maur (2010). "Beyond Market Access: The New Normal of Preferential Trade Agreements", World Bank Policy Research Working Paper No. 5454. <https://openknowledge.worldbank.org/bitstream/handle/10986/3937/WPS5454.pdf?sequence=1&isAllowed=y>.

At its inception, the Constitution enumerated a series of new labor protections that regulated contracts, improved working conditions, and outlawed debt peonage.<sup>11</sup> It banned gender-based salary discrimination, established minimum wage regulations, recognized the right to unionize and strike, banned female and child night work, and established a six-day workweek with a daily maximum of eight hours of work.<sup>12</sup> As such, the 1917 Mexican Constitution was a positive development in labor rights.

Despite the advances in labor laws, the army and the government did not consistently enforce these provisions and often violently broke up strikes.<sup>13</sup> Furthermore, the federalist nature of the Mexican state made it such that certain states were more favorable to unions than others, meaning that there were disparities in the implementation and protection of the new laws.<sup>14</sup> This contradiction between law and practice is a defining characteristic of Mexico's labor climate to this day.

The labor protections of Article 123 were later consolidated by Congress' enactment of Federal Labor Law in 1931. This law, which consisted of 685 articles, further expanded workers' protections and enlarged the role of the federal government in their implementation.<sup>15</sup> The expanded protections included six days of paid vacation, eight days of paid maternity leave for mothers before delivery and one month after, and penalties for wrongful discharge.<sup>16</sup> This law was in place until the new Federal Labor Law of 1970.

To put this change into historical context, the Federal Labor Law of 1931 occurred amid a highly significant shift in Mexican politics—the rise of the PRI in 1929. The PRI held a monopoly on political power from

1929 to 1997, in what Peruvian Nobel Laureate, Mario Vargas Llosa, called “the perfect dictatorship.”<sup>17</sup> Although there was a semblance of democracy, the PRI maintained power for almost 70 years through coercive measures including buying votes, election fraud, and cracking down on the opposition.<sup>18</sup> Consequently, Mexico was under a sham democracy for an extended period.

During this time, the relationship between unions and government emerged. *Centrals*, which are unions that represent and guide firm-level unions at the national level and participate in the Mexican Congress of Labor, tend to be the most powerful unions in Mexico due to their historically close relationship with the national government and widespread participation by private sector employees. Beginning with the election of the PRI in 1929, the government has been strongly connected with the Mexican labor movement. The PRI used *Centrals* to support economic development by containing workers and stagnating wages. Predictably, a majority of private sector *Centrals* are associated with the PRI.<sup>19</sup>

In total, there are 33 central union confederations, federations, and national unions in Mexico representing a majority of workers in the public, private, and banking sectors.<sup>20</sup> This unique relationship helped shape Mexico's labor environment, with lasting impacts which can still be seen today.

In the 1980s, the pressure for democracy started to build with the mild success of opposition candidates in regional elections but came to the fore during the 1994

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of the *American Academy of Political and Social Science* 71 (1917): I-116, <http://www.jstor.org/stable/1013370>.

11 Hernández Chávez, *Mexico: A Brief History*, 232.

12 Hamnett, *A Concise History of Mexico*, 215.

13 Hamnett, *A Concise History of Mexico*, 215.

14 Hernández Chávez, *Mexico: A Brief History*, 232.

15 Joseph M. Cormack and Frederick F. Barker, “The Mexican Labor Law,” *Southern California Law Review* 7, no. 3 (March 1934): 255-256, <https://scholarship.law.wm.edu/fac-pubs/1484/>.

16 Cormack and Barker, “The Mexican Labor Law,” 259.7.

17 Shannon K. O’Neil, “Mexico Makes It: A Transformed Society, Economy, and Government,” *Foreign Affairs*, March/April 2013, <https://www.foreignaffairs.com/articles/mexico/2013-03-01/mexico-makes-it>.

18 O’Neil, “Mexico Makes It.”

19 Department of Labor, Bureau of International Labor Affairs, *Foreign Labor Trends*, Department of Labor (Washington, D.C., 2002). [https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1106&context=key\\_workplace](https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1106&context=key_workplace).

20 Department of Labor, Bureau of International Labor Affairs, *Foreign Labor Trends*, Department of Labor (Washington, D.C., 2002). [https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1106&context=key\\_workplace](https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1106&context=key_workplace).

economic crisis, which occurred after NAFTA came into effect on January 1, 1994.<sup>21</sup> In 1996, under pressure from constituents and opposition parties due to increasing dissatisfaction with the government, President Ernesto Zedillo of the PRI enacted reforms that made electoral fraud more difficult to commit.<sup>22</sup> This reform effectively opened up the system to opposition by granting open access to media, setting controls on election spending, and ending the PRI's control over the election process.<sup>23</sup> Thus, in 1997, for the first time in 28 years, the PRI lost control of Congress. In 2000, Vicente Fox from the National Action Party (PAN) was elected, beginning a new era of democracy in Mexico.

## C. Economic History

### a. Trade Liberalization

A distinct and notable characteristic of Mexico's history is that economic liberalization preceded the political transformation and democratization described in the previous section.<sup>24</sup> The following section will detail chronologically how Mexico designed this economic liberalization agenda. The first section will describe how Mexico began to push this agenda in the 1960s, with a new orientation towards the export manufacturing sector. The second section will detail the reforms necessary for Mexico's accession to the GATT in the 1980s, when the PRI was still in power. It concludes with the negotiations between the United States, Mexico, and Canada, and the eventual ratification of NAFTA, a process which began in 1990, a full six years before the election reform of 1996.

### i. Maquiladoras

Before the 1980s, Mexico based its economic strategy on an import-substitution industrialization model (ISI) and, therefore, required significant government regulations and market protections. This strategy translated into a weighted average tariff of 23.5 percent, an import license requirement covering 92.2 percent of national production, and a cap on foreign ownership of firms to 49 percent.<sup>25</sup> This government involvement served to protect Mexican industries from foreign competition to allow them time to develop. However, protection came at a high financial cost to the Mexican government, notably stagnant economic growth.

The implementation of "Mexico's Border Industrialization Program" in 1965 began the boom of the *maquiladora* industry, the only exception to the protectionist strategy that characterized Mexico before the 1980s.<sup>26</sup> *Maquiladoras*, or *maquilas*, are factories in Mexico that assemble parts into finished goods for export. When shipped, these products are largely excluded from duties and tariffs. The Mexican government designed the program in response to the termination of the *bracero* program, an agreement between the United States and Mexico which enabled Mexican men to enter the United States as guest workers to fill a labor shortage gap after World War II.<sup>27</sup> The industrialization program was characterized by the unrestricted entry of foreign capital into the border region, the allowance of directly owned subsidiaries or subcontractors by foreign corporations, and the provision of tax-exempt status, except for the value added from manufacturing labor.<sup>28</sup> The Mexican American Chamber of Commerce

21 O'Neil, "Mexico Makes It."

22 Sam Dillon, "Major-Party Deal in Mexico to bring Political Reforms," *The New York Times*, July 27, 1996, <https://www.nytimes.com/1996/07/27/world/major-party-deal-in-mexico-to-bring-political-reforms.html>.

23 Dillon, "Major-Party Deal in Mexico to bring Political Reforms."

24 Guadalupe Correa-Cabrera, "Mexico's Economic Dilemmas and Democratic Challenges in an Era of Reform," *Latin American Politics and Society* 54, no. 4 (2012): 179-88, <http://www.jstor.org/stable/23322105>.

25 Hildegunn Kyvik Nordås, *Is Trade Liberalization a Window of Opportunity for Women?*, August 2003, <https://papers.ssrn.com/abstract=925793>.

26 Gautam Hazarika and Rafael Otero, "Foreign Trade and the Gender Earnings Differential in Urban Mexico," *Journal of Economic Integration* 19, no. 2, (June 2004): 353-373, <https://www.jstor.org/stable/23000785>.

27 Raúl Delgado-Wise and Humberto Márquez Covarrubias, "The Reshaping of Mexican Labor Exports under NAFTA: Paradoxes and Challenges," *International Migration Review* 41, no. 3 (September 2007): 656-679, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1747-7379.2007.00089.x>.

28 Hazarika and Otero, *Foreign Trade and the Gender Earn-*



estimated that “the average cost advantage of a *maquiladora* plant over its U.S. counterpart at over \$13 per worker per hour.”<sup>29</sup> Given this calculation, foreign corporations, particularly U.S. companies, realized that they could significantly reduce costs by importing the raw materials into Mexico and re-exporting the finished goods with U.S. import duties levied only on the relatively cheap Mexican labor. As a result, the *maquiladoras* quickly became the fastest growing sector of the Mexican economy and the second largest source of foreign exchange.<sup>30</sup> Between 1982 and 2005, exports of the *maquiladora* industry increased 28-fold from \$96.756 billion to \$147.521 billion and between 1980 and 2006, employment increased tenfold from 0.12 million to 1.2 million.<sup>31</sup>

## ii. General Agreements on Tariffs and Trade (GATT) and NAFTA

The transition of the entire Mexican economy away from the import-substitution model ushered in a ‘secondary-exporting model’ which targeted manufacturing exports as the dynamic factor of national economic growth.<sup>32</sup> To implement this model, Mexico successfully joined the General Agreements on Tariffs and Trade (GATT) in 1986 (later leading to accession to the WTO in 1995), which required complying with unilateral tariff reductions and a lower cap on foreign ownership. Mexico applied these reductions rapidly, such that by 1987, the highest tariff was reduced to 20 percent and the tariff structure was simplified to include only five

different rates: 0 percent, 5 percent, 10 percent, 15 percent, 20 percent.<sup>33</sup> These reforms led to an increase in inflows of foreign capital, from \$478 million in 1983 to \$3.635 billion in 1989.<sup>34</sup>

Starting in 1990, Mexico’s economic strategy pivoted towards prioritizing bilateral free trade agreements, most notably NAFTA in 1994. NAFTA is a regional trade agreement which removed barriers to trade and investment between the United States, Canada, and Mexico. Between 1993 and 2016, regional trade and investment increased by over \$810 billion to reach \$1.1 trillion.<sup>35</sup> NAFTA transformed and revitalized Mexico’s centralized economy after the harmful economic effects of a debt crisis in the 1980s. NAFTA solidified these new market economy reforms and accelerated foreign direct investment (FDI), creating approximately a half-million new jobs before 2000.<sup>36</sup> These jobs were primarily in the *maquiladora* sector, which expanded from northern Mexican border states into central Mexico.<sup>37</sup> Over the first five years of NAFTA, *maquiladora* employment increased by 86 percent.<sup>38</sup>

Beginning in 2017, NAFTA was renegotiated. The new agreement, renamed the US-Mexico-Canada Agreement (USMCA), was signed by all three Parties in November of 2018 at the G20 Summit in Buenos Aires. However, the agreement has yet to be ratified by each country’s respective legislature. As written, the USMCA increases labor and environmental regulations, up-

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*ings Differential in Urban Mexico.*

29 Laura Catharine Macdonald and C. Gabriel, *NAFTA*, “Women and Organising in Canada and Mexico: Forging a ‘Feminist Internationality,’” *Millennium - Journal of International Studies* 23, vol. 3, (March 1994): 535-562, <https://journals.sagepub.com/doi/10.1177/03058298940230030601>.

30 Patricia Fernández-Kelly, “Gender and Economic Change in the United States and Mexico, 1900-2000,” *American Behavioral Scientist* 52, no.3 (November 2008): 377:404, <https://doi.org/10.1177/0002764208323512>.

31 Delgado-Wise and Covarrubias, *The Reshaping of Mexican Labor*; Paul R. Bergin, Robert C. Feenstra, and Gordon H. Hanson, “Offshoring and Volatility: Evidence from Mexico’s Maquiladora Industry,” *American Economic Review* 99, no. 4 (September 2009), pp. 1664-71, <http://www.aeaweb.org/articles.php?doi=10.1257/aer.99.4.1664>.

32 Delgado-Wise and Covarrubias, “The Reshaping of Mexican Labor Exports under NAFTA: Paradoxes and Challenges.”

33 Ernesto Aguayo-Tellez, Jim Airola, and Chinhui Juhn, “Did Trade Liberalization Help Women? The Case of Mexico in the 1990s,” *Research in Labor Economics*, Vol. 38 (July 2010), pp. 1-35, <http://www.nber.org/papers/w16195>.

34 Hildegunn Kyvik Nordås, *Is Trade Liberalization a Window of Opportunity for Women?*

35 Congressional Research Service, *North American Free Trade Agreement*, by Ian Fergusson and M. Villarreal, (Washington, D.C., 2017) <https://fas.org/sgp/crs/row/R42965.pdf>.

36 William Gruben, “Did NAFTA Really Cause Mexico’s High Maquiladora Growth?” *Center for Latin American Economics, Federal Reserve Bank of Dallas* (2001). <https://www.dallasfed.org/~media/documents/research/papers/2001/wp0106.pdf>.

37 Dr. Eva O. Arceo-Gomez (Professor, Centro de Investigación y Docencia Económicas A.C.) in discussion with the authors, January 2019.

38 William Gruben, “Did NAFTA Really Cause Mexico’s High Maquiladora Growth?”

dates intellectual property protections, imposes a quota for Canadian and Mexican automotive production, increases the duty-free limit for online purchases, and expands the United States' access to Canada's dairy market.<sup>39</sup>

## D. Mexico Today

In 2018, AMLO, the former mayor of Mexico City, was elected president of Mexico. Currently, his party, the National Regeneration Movement (MORENA), holds the majority in both the Senate, with 59 seats, and the Chamber of Deputies, with 259 seats.<sup>40</sup>

The 2018 elections played out in the context of broad dissatisfaction with democracy in Mexico. Misuse of public funds, lawbreaking, and issues with campaign finance have all contributed to this erosion of public support for traditional Mexican politics.<sup>41</sup> Thus, Mexicans went into the elections with a deep sense of dissatisfaction for the country's politics, including anger at the slow economic growth, the rampant corruption, and the widespread gang, cartel, and political violence.<sup>42</sup> This displeasure engendered a desire for political transformation, and thus support for AMLO's anti-establishment populist agenda.

AMLO's policy proposals include the creation of a

National Guard to fight violence, several plans for curbing corruption and cutting public sector spending, an apprenticeship program for youth, and higher pensions for the elderly, as well as cutting his own salary and those of other senior government officials.<sup>43</sup> In terms of labor rights, AMLO and MORENA have promised many changes, including increasing the minimum wage to keep up with inflation, overhauling labor unions to give workers a larger say, and improving workers' conditions.<sup>44</sup>

That being said, AMLO has faced some controversy over his criticism of civil society.<sup>45</sup> In fact, in February 2019, AMLO distributed an internal memorandum to his cabinet banning funding for "social organizations, unions, civil society organizations, NGOs, or philanthropic societies," arguing that it leads to corruption, misuse of funds, and lack of transparency.<sup>46</sup> Instead, the new policy is to give aid directly to beneficiaries in order to avoid using civil society and other organizations as intermediators for government benefit transfers.<sup>47</sup>

In terms of the future of international trade, the current administration has proven supportive of USMCA, despite AMLO's previous history of anti-free trade rhetoric.<sup>48</sup> In this regard, the argument is that USMCA will provide stability, secure investment, and contribute to

39 "Agreement between the United States of America, the United Mexican States, and Canada," signed November 30, 2018, *Government of the United States*, Retrieved 9 April 2019, <https://ustr.gov/trade-agreements/free-trade-agreements/unit-ed-states-mexico-canada-agreement/agreement-between>.

40 "Senadores por Grupo Parlamentario," Senado de la República de Mexico, [http://www.senado.gob.mx/64/senadores/por\\_grupo\\_parlamentario](http://www.senado.gob.mx/64/senadores/por_grupo_parlamentario); "Diputadas y Diputados por Entidad Federativa," LXIV Legislatura, Honorable Camara de Diputados de Mexico, last modified March 5, 2019, . (Since Mexico is a multiparty system, MORENA's majority in the Senate accounts for 46.1 percent of the seats, and its majority in the legislature for 51.8 percent of the seats, which both represent a majority vote in the chambers.).

41 María Amparo Casar, "The Shadow Hanging Over Mexico's 2018 Elections," *Americas Quarterly*, <https://www.americasquarterly.org/content/shadow-over-mexicos-2018-elections>.

42 "AMLO will be the Most Powerful Mexican President in Decades," *The Economist*, December 1, 2018, <https://www.economist.com/the-americas/2018/12/01/amlo-will-be-the-most-powerful-mexican-president-in-decades>.

43 "AMLO will be the Most Powerful Mexican President in Decades," *The Economist*.

44 Juan Montes, "Mexico's President-Elect Prepares Labor Overhaul to Empower Workers," *The Wallstreet Journal*, September 11, 2018, <https://www.wsj.com/articles/mexico-president-elect-prepares-labor-overhaul-to-empower-workers-1536704229>.

45 Flor Hernández, "Diálogo y Distinción Pide la Sociedad Civil a AMLO," *Newsweek en Español*, March 13, 2019, <https://newsweekespanol.com/2019/03/dialogo-distincion-pide-sociedad-civil-amlo/>.

46 Isabel Gonzalez, "El Ejecutivo Ordena No dar Dinero a ONG; Medida Ante Discrecionalidad," *Excelsior*, February 19, 2019, <https://www.excelsior.com.mx/nacional/el-ejecutivo-ordena-no-dar-dinero-a-ong-medida-ante-discrecionalidad/1297259>.

47 Gonzalez, "El Ejecutivo Ordena No dar Dinero a ONG."

48 Elisabeth Malkin, "Mexico's New Leader, Once a NAFTA Foe, Welcomes New Deal," *The New York Times*, October 1, 2018, <https://www.nytimes.com/2018/10/01/world/americas/nafta-mexico.html>.

job creation in Mexico.<sup>49</sup> It is also worth noting that AMLO campaigned on revitalizing the sectors of the economy which have lagged behind since the implementation of NAFTA, with a particular focus on developing the South.<sup>50</sup>

## E. Legal Framework

In order to understand the context in which NAFTA was applied in Mexico (and the context in which USMCA will be applied when it is ratified by Mexico's Congress), it is necessary to gain an understanding of the legal framework in Mexico. The following section will examine the legal regime regarding women's rights, labor rights, and international trade to help frame the discussion of working women in Mexico. It will begin with a survey of Mexico's domestic laws, with an emphasis on the Mexican Constitution of 1917. This will be followed by a review of relevant regional and international law, including Mexico's legally binding obligations and voluntary commitments.

### a. Domestic Law

#### i. Protection of Workers

The 1917 Constitution devoted more than 60 subsections to labor and social security, and dedicated entire articles to free education, property rights, and worker rights. It is important to recall that the Constitution was written following Mexico's Revolutionary War, which was spearheaded by workers. Consequently, the 1917 Constitution emphasizes the right to work in Article 4. This grants the right to employment or some trade, in which a person will receive a salary in exchange for their work. Article 4 further states that people have the right to work in *any profession*. Thus, the Constitution does not expressly limit what constitutes as "work." Article 5 expands on this by asserting that a worker is entitled to remuneration and by declaring that a labor contract cannot "[restrict] any civil or political right."<sup>51</sup> This article signifies that no type of work that a person does can impede their right to exercise political or civil

rights as laid out in the Constitution.

Section 6 of the Constitution delves deeper into labor and social security rights. Article 123, the only article of this section, defines laborers as "workers, day laborers, domestic servants, artisans, and in a general way to all labor contracts."<sup>52</sup> There is no mention of the formality of labor contracts. The Constitution does not clearly define contracts, which can lead to many issues for laborers—significantly, that many people with informal contracts do not have guaranteed rights, or, at least, recognition of their rights. For example, many domestic workers in Mexico do not receive social security benefits. A recent Supreme Court ruling in December 2018 hopes to alter this, by stating that domestic workers should be enrolled in social security.<sup>53</sup> The Court said it will give the government three years to comply with this mandate.<sup>54</sup> However, based on how Article 123 defines this group (as laborers), they should have received these benefits beforehand. Thus, there exists an irregularity in practice.

Furthermore, the Constitution protects citizens who have been wrongfully treated. It states that employers have to compensate workers with three months of wages in the event that the employee leaves due to ill treatment towards either himself or herself, or his or her family.<sup>55</sup> This provision can be interpreted as a mechanism installed to ensure that workers, or their families, are not abused by their employees. While this inclusion of family demonstrates the progressiveness of the constitutional drafters, it also complicates the interpretation of this article. Defining family and ill-treatment is no small task, especially since the Constitution does not explicitly explain either of these concepts.

Article 123 defines the length of the workday, giving the "maximum duration" of a regular work day as eight hours.<sup>56</sup> It also stipulates that the duration of a

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52 Mexican Constitution of 1917, art 123.

53 Amy Guthrie, "After ruling, hit film, Mexico reconsiders domestic workers," *AP News*, December 20, 2018, accessed April 11, 2019, <https://www.apnews.com/e89d8dd061ac40b590d1fb606bece49f>.

54 "Corte: seguridad social obligatoria para servicio doméstico," *Telemundo*, December 7, 2018, <https://www.telemundo62.com/noticias/mexico/suprema-corte-ordena-seguridad-social-obligatoria-para-servicio-domestico-502178101.html>

55 Mexican Constitution of 1917, art.123. (v).

56 Mexican Constitution of 1917, art.123. (a).

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49 Malkin, "Mexico's New Leader, Once a NAFTA Foe, Welcomes New Deal."

50 Malkin, "Mexico's New Leader, Once a NAFTA Foe, Welcomes New Deal."

51 Mexican Constitution of 1917, art.5(a).



night shift is seven hours. A day of rest is required for every six working days. The issue of overtime is also addressed in Article 123; if a laborer's hours increase, they must be fully compensated. The Constitution further imposes limits on the amount of overtime, stating that "overtime work may never exceed three hours a day nor three times consecutively."<sup>57</sup> Thus, the maximum amount of time a laborer can work in a day, per the Constitution, is 11 hours.

Furthermore, the Constitution of 1917 dictates that the local municipality must notarize every contract with a foreign employer.<sup>58</sup> This means that all foreign companies that have factories, or *maquiladoras*, in Mexico, must notarize every employee's contract. Thus, every employee has a contract that is recognized by the company and government, and should be entitled to receive benefits. This protects workers since companies would, legally, not be allowed to deny proof of employment or social security benefits.

The Constitution sets restrictions to prevent employers from taking advantage of their workers. The article also states that laborers must receive a minimum wage either "in general or according to occupation."<sup>59</sup> The wage "must be sufficient to satisfy the normal material, social, and cultural needs of the head of a family and to provide for the compulsory education of [their] children."<sup>60</sup> This provision essentially describes the right to a *living wage*. However, defining "normal" presents itself as a challenge—normal to whom? Furthermore, it states that "equal wage shall be paid for equal work, regardless of sex."<sup>61</sup> This "equal pay for equal work" provision is essential when considering the effects that free trade has had in Mexico, especially towards women workers.

In 2006, the Mexican Congress passed the General Law on Equality between Women and Men.<sup>62</sup> Article 1

states that the law was created to regulate and guarantee equal opportunities and treatment between women and men in all sects of life.<sup>63</sup> It further states how every aspect of society is included in the law, for example, economic life, social life, and stereotypes that permeate Mexican society. Article 42 describes a method to eliminate stereotypes through adopting gender-perspective language.<sup>64</sup> Furthermore, the law illustrates the importance of co-responsibility in work, and life, between men and women, as well as establishing access to work for women and promoting equality within the workplace.<sup>65</sup>

In the following year, the Mexican government continued implementing new laws on gender equality, with its passage of the General Law on Women's Access to a Life Free of Violence of 2007. This law specifically includes a section on violence in the workplace. It describes gender-based violence in the workplace as sexual harassment, sexual assault, discrimination, threats, or humiliation.<sup>66</sup> It also includes measures that the government must take to address these, such as creating mechanisms to eradicate gender-based violence through education and labor centers.<sup>67</sup> The law also describes the government's aim to end gender-based violence in Mexican society at all levels of government.<sup>68</sup> The law defines the different types of violence against women, such as: psychological, physical, economic, sexual, and other forms that are prone to damaging the integrity, dignity, or liberty of women.<sup>69</sup>

The Constitution does not limit pregnant women from

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Men, 2006, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIMH\\_140618.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIMH_140618.pdf).

63 Mexican General Law on Equality Between Women and Men, 2006, art. 1.

64 Mexican General Law on Equality Between Women and Men, 2006, art. 42.

65 Mexican General Law on Equality Between Women and Men, 2006, art. 33.

66 Mexican General Law on Women's Access to a Life Free of Violence, 2007, art. 11, art. 12., art. 13.

67 Mexican General Law on Women's Access to a Life Free of Violence, 2007, art. 15.

68 Mexican General Law on Women's Access to a Life Free of Violence, 2007.

69 Mexican General Law on Women's Access to a Life Free of Violence, 2007, art. 6.

57 Mexican Constitution of 1917, art. 123. (k).

58 Mexican Constitution of 1917, art. 123. (z).

59 Mexican Constitution of 1917, art. 123. (f).

60 Mexican Constitution of 1917, art. 123. (f).

61 Mexican Constitution of 1917, art. 123. (g).

62 Mexican General Law on Equality Between Women and

working; thus, theoretically women should not need to choose between motherhood and work. Employers are not permitted to subject pregnant women to excessive labor.<sup>70</sup> If a woman is six months pregnant or more, her employer cannot legally oblige her to do certain work, nor can they dismiss her for *not* doing “excessive” work. Nevertheless, it is important to note that “excessive” is not defined.

Social security also provides for maternity leave. Article 123 continues by stating, “in the month following childbirth they shall necessarily enjoy the benefit of rest and shall receive their full wages and retain their employment.”<sup>71</sup> In 1917, the Mexican Constitution granted women one month of paid maternity leave, during which their employers could not dismiss them. Today, women are granted 12 weeks of maternity leave, with six weeks occurring before birth and six weeks given after birth, under Article 120 of the Mexican Federal Labor Law.<sup>72</sup> Furthermore, Article 123 grants nursing mothers two 30-minute breaks throughout the day to nurse their children. In 2017, Article 123 of the Federal Labor Law was reformed to include paternity leave.<sup>73</sup> This new provision grants five days of paternity leave, whereas it was nonexistent before.

Forced pregnancy testing is prohibited by law. Under Mexican Federal Labor Law Article 133, “employers are now prohibited from demanding medical proof that a worker is not pregnant as a condition of employment.”<sup>74</sup> Furthermore, employers cannot dismiss a worker for being pregnant or “pressuring her, directly

or indirectly, to resign.”<sup>75</sup>

Mexico has robust legislation regarding employment benefits. These benefits should be provided without discrimination based on gender, race, and sexual orientation. Furthermore, there are certain benefits which are explicitly targeted for new mothers and fathers, such as maternity and paternity leave. These rights cover “work accidents and occupational diseases, non-occupational illness and maternity; and retirement, disability, old age, and death.”<sup>76</sup> However, to be entitled to these benefits, a worker must generally be employed in the formal sector.

These benefits are primarily derived from social security which is stipulated in Article 123 of the Constitution. The Mexican Social Security Institute (IMSS) oversees these programs and funds social security through contributions by employees and employers. To qualify for social security, employees must be registered by their employers. Mexican law requires employers to register each employee with the IMSS within five days of hiring.<sup>77</sup>

## ii. Collective Bargaining

Mexico’s collective bargaining laws are strong. International Labour Organization (ILO) Convention No. 87, the Freedom of Association and Protection of the Right to Organise, was codified domestically in Article 123 of the Mexican Constitution and has formed the basis of collective bargaining protections within the country since its ratification in 1951.<sup>78</sup> In 2017, Article 123 was further amended to require the formation of a government agency and Conciliation and Arbitration Boards (CABs) to register all workers’ unions and manage associated administrative processes.<sup>79</sup>

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70 Mexican Constitution of 1917, art.123. (e).

71 Mexican Constitution of 1917, art.123. (e).

72 Maquila Solidarity Network, *Comparison of Mexico’s Federal Labor Law, International Labor Organization standards, and FLA Code and Benchmarks*, January 2015, <http://www.maquilasolidarity.org/en/comparison-mexicos-federal-labor-law-ilo-standards-and-fla-code-and-benchmarks-january-2015>.

73 Secretary of Work and Social Provision, “Tienen padres trabajadores derecho a cinco días de licencia por paternidad,” News Release, June 18, 2017, <https://www.gob.mx/stps/prensa/tienen-padres-trabajadores-derecho-a-cinco-dias-de-licencia-por-paternidad?idiom=es>.

74 Maquila Solidarity Network, *Comparison of Mexico’s Federal Labor Law, International Labor Organization standards, and FLA Code and Benchmarks*.

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75 Maquila Solidarity Network, *Comparison of Mexico’s Federal Labor Law, International Labor Organization standards, and FLA Code and Benchmarks*.

76 Mexican Constitution of 1917, art.123. (k) (k) (a).

77 United States Social Security Administration Office of Retirement and Disability Policy, “Social Security Programs Throughout the World: The Americas,” Social Security Administration (2017) <https://www.ssa.gov/policy/docs/progdesc/ssptw/2016-2017/americas/mexico.html>.

78 Mexican Constitution. Article 123(j).

79 Jorge De Presno. “Mexico: Articles 107 and 123 of the



There are also protections in place for laborers who join a union; for instance, employers do not have just cause to terminate a labor contract solely due to the laborer's participation in a union.<sup>80</sup> If an employer dismisses a worker due to his or her involvement in a union, the employer must compensate the worker with the equivalent of three months wage.<sup>81</sup> However, some companies could afford to pay the three months wage, demonstrating that current repercussion may not deter wealthier companies from dismissing unionized workers. This presents itself as a gap that could be mediated if the government added more sanctions to companies who fire employees for their involvement in a union, especially for those who can afford to pay the current fine.

### iii. Constitutional Reform of 2017

As mentioned previously, the Mexican government has reformed Article 123, related to collective bargaining, several times, most recently in 2017.<sup>82</sup> The two main areas of reform are tripartite CBAs and unions, as well as collective bargaining agreements (CBAs).

A special federal entity was further created to oversee the registration and administration of CBAs. The tripartite system that existed previously was inefficient and acted independently of the judicial system.<sup>83</sup> Its dismantling does not eradicate the need for conciliation and labor tribunals. According to the decree, labor tribunals—local and federal—under the guise of the judiciary will now be responsible for resolving conflicts between workers and employers.<sup>84</sup> Before going

to court to resolve a dispute, workers and their employers are required to go before a local conciliation center, which will have judicial personality. The same center is also required to register the collective bargaining and union agreements, as well as aid in an administrative manner.<sup>85</sup> Additionally, these conciliation centers are constitutionally obliged to register unions and CBAs.

The purpose of this change is to provide clarity and transparency within the country as well as with workers. However, until these courts are fully implemented, CBAs will continue to register and administer collective bargaining agreements, as well as hear employment disputes.

The decree to reform the Constitution also “elevates to the constitutional level the right for workers to be represented by the union of their free choice.”<sup>86</sup> The Constitution now guarantees the principle of representation in a union, as well as assures the signature and registration of the CBAs or union contracts. Therefore, this decree has further promoted workers’ freedom to choose the union in which they would like to participate. It is important to establish and solidify this legal standard, given the current tenuous state of unions in the country, as will be discussed in Part III.

Annex 23-A in the proposed free trade agreement between Mexico, the United States, and Canada (USMCA) prompted this new constitutional and labor reform. As a consequence of this new free trade agreement, Mexico is obliged to extend protection to laborers.<sup>87</sup> These protections include 1) the right to unionize without employer interference, 2) the right for independent organizations to register unions and to resolve conflicts 3) the right to hold a secret vote to resolve disputes. Furthermore, the agreement includes revisions of wage and work conditions within unions themselves.<sup>88</sup> The Annex explicitly calls for publication of the union agreements that are “readily accessible” to the public.

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Mexican Constitution (Political Constitution of the United Mexican States).”

80 Mexican Constitution of 1917, art.123. (v).

81 Mexican Constitution of 1917, art.123. (v).

82 Maquila Solidarity Network, *Labor Justice Reform in Mexico: A Briefing Paper*, July 2017, [http://www.maquilasolidarity.org/sites/maquilasolidarity.org/files/resource/Labour\\_Justice\\_Reform\\_Mexico\\_MSN-2017.pdf](http://www.maquilasolidarity.org/sites/maquilasolidarity.org/files/resource/Labour_Justice_Reform_Mexico_MSN-2017.pdf).

83 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

84 Mexican Federal Decree 231 of 2017, [http://dof.gob.mx/nota\\_detalle.php?codigo=5472965&fecha=24/02/2017](http://dof.gob.mx/nota_detalle.php?codigo=5472965&fecha=24/02/2017).

85 Mexican Federal Decree 231 of 2017.

86 Maquila Solidarity Network, *Labor Justice Reform in Mexico: A Briefing Paper*, July 2017.

87 Salomón, “Se prepara una nueva reforma laboral.”

88 Salomón, “Se prepara una nueva reforma laboral.” ; United States-Mexico-Canada Agreement, Annex 23-A.

The Constitutional reforms demonstrate Mexico's commitment to assuring the right of collective bargaining and unions and its commitment to laborers. However, Mexico also has regional and international obligations under various treaties. Article 1 of the Constitution states that every person in Mexico is guaranteed the human rights laid out in the Constitution, as well as international treaties to which Mexico is a state party. Since Mexico is a monist state, international treaties are integrated into its domestic framework.<sup>89</sup> On May 1, 2019, the Mexican government passed this reform, granting workers the right to "organize freely and engage in collective bargaining."<sup>90</sup> This represents a huge step for Mexico, and demonstrates the strong implications that trade agreements can have for human rights.

## b. Regional Law

### i. Inter-American System

The Mexican government is obliged to codify international texts it has signed and ratified into its domestic legal system. In the Inter-American regional human rights system, Mexico is a party to the American Declaration of the Rights and Duties of Man (American Declaration), the Protocol of San Salvador, and the Convention of Belém do Pará. The American Declaration grants the right to work, the right to social security, and the right to create and participate in a labor union.<sup>91</sup>

The Protocol of San Salvador, ratified by Mexico in 1996, includes the obligations of non-discrimination and the right to work. Under the Protocol, states are also obliged to "implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right

to work."<sup>92</sup> The inclusion of the latter in the Protocol of San Salvador demonstrates the importance of recognizing the dual role that many women play within society as both mothers and workers. Although Mexico already has in place similar constitutional rights for women, the Protocol explicitly states that this provision is intended to ensure that women enjoy a real opportunity to work and that the structure of society does not impede women's will to work. The Protocol's key provision is that women are not solely caretakers. In practice this could translate to states providing child care for women to grant them an honest opportunity to work.

Notably, Mexico has one reservation to the Protocol of San Salvador, related to Article 8. Article 8 states that "no one may be compelled to belong to a trade union."<sup>93</sup> The reservation states that Mexico ratified the Protocol with the understanding that Article 8 will be applied according to the Mexican constitution.<sup>94</sup> Under the Mexican constitution, the Mexican people have the right to form and join unions; however, there is no explicit mention of being "compelled" to join a union.

The Convention of Belém do Pará, ratified by Mexico in 1998, concerns itself with the prevention, punishment, and eradication of violence against women. This Convention requires states to "refrain from engaging in any act or practice of violence against women" as well as applying "due diligence to prevent, investigate and impose penalties for violence against women."<sup>95</sup> In the context of labor, this means that states are obliged to prevent and investigate working conditions that promote violence against women. This has been incorporated into Mexican law, as can be seen with the General Law on Women's Access to a Life Free of Violence,

89 David Sloss, "Domestic Application of Treaties," Santa Clara Law, April 7, 2011, <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1620&context=facpubs>.

90 Alexia Fernández Campell, "Workers in Mexico just won the right to organize real labor unions. Trump helped," *Vox*, May 1, 2019, <https://www.vox.com/2019/5/1/18523972/may-day-2019-mexico-labor-reform>.

91 Organization of American States (OAS), *American Declaration of the Rights and Duties of Man*, 2 May 1948, art. (XIV), art. (XVI), and art. (XXII), [https://www.oas.org/dil/access\\_to\\_information\\_human\\_right\\_American\\_Declaration\\_of\\_the\\_Rights\\_and\\_Duties\\_of\\_Man.pdf](https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf)

92 Organization of American States (OAS), *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* ("Protocol of San Salvador"), November 17, 1988, art. 6. <http://www.oas.org/juridico/english/treaties/a-52.html>.

93 OAS, "Protocol of San Salvador", art.8(b).

94 OAS, "Protocol of San Salvador", Mexico Reservation, <http://www.oas.org/juridico/english/sigs/a-52.html>.

95 Organization of American States (OAS), *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* ("Convention of Belem do Para"), June 1994, art. 7, [https://www.oas.org/en/CIM/docs/Belem-do-Para\[EN\].pdf](https://www.oas.org/en/CIM/docs/Belem-do-Para[EN].pdf).

which includes a section on gender-based violence in the workplace.<sup>96</sup>

## ii. The Cotton Field Case

The Inter-American Court of Human Rights (IACtHR) case of *González et al. ("Campo Algodonero") v. México*, known colloquially as the "Cotton Field Case," highlights gender-based violence, the dangers of traveling between work and home, as well as the gender-based stereotypes that impede women's rights.<sup>97</sup> In November 2001, the bodies of three women—identified as those of Claudia Ivette Gonzalez, Esmerelda Herrera Monreal, and Laura Berenice Ramos Monarrez—were found in a cotton field outside of Ciudad Juárez. Monarrez and Monreal disappeared on their journeys home from their jobs as a maid and a student, respectively, while Gonzalez disappeared after being turned away from work after she arrived two minutes late for her shift at a *maquiladora*.<sup>98</sup>

When their families reported the disappearances of the women to the police, authorities told them that the women were "probably with their boyfriends." Upon discovery of the bodies, the investigation by police was completely botched, leading the families of Gon-

zalez, Monreal, and Monarrez to bring a case against Mexico to the IACtHR.<sup>99</sup>

In 2009, the IACtHR ruled that Mexico violated seven articles of the American Convention on Human Rights and one article of the Belém do Pará Convention.<sup>100</sup> Of particular significance is the ruling on Article 7 of said Convention; Article 7 obligates states to "condemn all forms of violence against women" and "...pursue...policies to prevent, punish, and eradicate violence..."<sup>101</sup> The Court determined that the Mexican government violated Article 7 because it "went through the formalities of taking down statements, but did not diligently try to find victims" and "did not prove that it had adopted or implemented the necessary measures as mandated in Article 2 (obligation to Give Domestic Legal Effect to Rights) of the American Convention and Article 7(c) of the Convention of Belém do Pará."<sup>102</sup>

The Court issued several recommendations in light of its findings, among them that Mexico must "include a gender perspective in all investigations" and that Mexico must "continue implementing permanent education and training programs and courses in (para. 541): ...elimination of stereotypes of women's role in society."<sup>103</sup> The Court's decision illustrates a recurring problem in Mexico: although Mexico has ratified many international instruments related to human rights, and has integrated most of these instruments into its domestic legal framework, implementation of these laws frequently does not occur.

96 Mexican General Law on Women's Access to a Life Free of Violence, 2007, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV\\_130418.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV_130418.pdf).

97 "Gonzales, Monreal, and Monarrez ("Cotton Field") v. Mexico," London School of Economics Centre for Women, Peace, and Security: March 20, 2019, <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/gonzalez-et-al-v-mexico/>.

98 Organization of American States Inter-American Commission on Human Rights, "Application filed with the Inter-American Court of Human Rights in the case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12.496, 12.497 and 12.498) against the United Mexican States," <https://www.cidh.oas.org/demandas/12.496-7-8%20Campo%20Algodonero%20Mexico%204%20noviembre%202007%20ENG.pdf>; London School of Economics Centre for Women, <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/gonzalez-et-al-v-mexico/>; "Application Filed with the Inter-American Court of Human Rights in the Case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12.496, 12.497 and 12.498) against the United Mexican States," Organization of American States (November 2007): <https://www.cidh.oas.org/demandas/12.496-7-8%20Campo%20Algodonero%20Mexico%204%20noviembre%202007%20ENG.pdf>.

99 "Gonzales, Monreal, and Monarrez ("Cotton Field") v. Mexico," London School of Economics Centre for Women, Peace, and Security.

100 "Gonzales, Monreal, and Monarrez ("Cotton Field") v. Mexico," London School of Economics Centre for Women, Peace, and Security.

101 "Gonzales, Monreal, and Monarrez ("Cotton Field") v. Mexico," London School of Economics Centre for Women, Peace, and Security.

102 "Gonzalez et. al ("Cotton Field") v. Mexico," *Loyola Law School*. Los Angeles: 2009. [https://iachr.ils.edu/sites/default/files/iachr/Cases/Gonzalez\\_et\\_al\\_-Cotton\\_Field-\\_v\\_Mexico/Gonzalez%20et%20al.%20v.%20Mexico.pdf](https://iachr.ils.edu/sites/default/files/iachr/Cases/Gonzalez_et_al_-Cotton_Field-_v_Mexico/Gonzalez%20et%20al.%20v.%20Mexico.pdf).

103 "Gonzales, Monreal, and Monarrez ("Cotton Field") v. Mexico," London School of Economics Centre for Women, Peace, and Security.



## c. International Human Rights Law

In addition to the regional documents described above, Mexico has also ratified several international documents related to human rights. For the purpose of this report, the most relevant international human rights instruments ratified by Mexico are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

The ICCPR provides for, among others, the principle of equality before the law. Article 26 establishes that everyone is equal before the law, as well as grants equal protection of the law without discrimination.<sup>104</sup>

Article 7 of the ICESCR outlines the right to work. It stipulates the right to upward mobility in the labor force, regardless of gender. It states that there is “equal opportunity for everyone to be promoted.”<sup>105</sup> Thus, by signing, Mexico demonstrated its commitment to equality in the labor force.

Given the interdependence of human rights, realizing women’s rights will contribute to the realization of the right to work. In Article 2, CEDAW mandates that parties to the Convention take up policies of eliminating discrimination against women.<sup>106</sup> Discrimination against women includes gender-based violence (GBV).<sup>107</sup> Further, and particularly relevant for the context in Mexico, is Article 5 concerning gender stereotyping and prejudice. Pursuant to Article 5(a), Parties are obligated to pursue measures changing social and cultural

norms with the aim of removing practices that promote gender stereotypes or are founded on ideas of inferiority or superiority of the sexes.<sup>108</sup> Moreover, Article 5(b) provides for measures that ensure a family education that identifies, among others, the shared responsibility of women and men in raising children.<sup>109</sup>

CEDAW also addresses workplace discrimination in Article 11, enshrining the state’s responsibility to “eliminate discrimination against women in the field of employment” as well as the right to job promotion and social security.<sup>110</sup> The CEDAW Committee, in General Comment No. 19, observes how GBV, such as work-based sexual harassment, hurts women’s equality in employment.<sup>111</sup> The convention continues by expressing the right to maternity leave, as well as a prohibition of “dismissal on the grounds of pregnancy or maternity leave.”<sup>112</sup> As described above in Part I (E)(a)(i), Mexico has incorporated these international obligations into its domestic framework through the Federal Law on Equality between Men and Women. This law guarantees the right to equal opportunities between women and men.<sup>113</sup>

Further, article 7 of CEDAW obliges states to “eliminate discrimination against women in the political and public life of the country.”<sup>114</sup> Additionally, states must ensure the right of women to hold public office and to be included in policymaking. This has been incorporated into the domestic legal framework through the General Law on Equality between Women and Men, which is discussed above. Furthermore, gender parity requirements have been established in both the Federal Code on Institutions and Electoral Procedures and Article 41 of the Constitution.<sup>115</sup> Mexico has a gender parity

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104 UN General Assembly, International Covenant on Civil and Political Rights.

105 UN General Assembly, International Covenant on Economic, Social and Cultural Rights.

106 *Convention on the Elimination of All Forms of Discrimination against Women*, New York, December 18, 1979, *United Nations Treaty Series*, vol. 1249, art. 2, available at, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article12>. [hereinafter: CEDAW].

107 UN Committee on the Elimination of Discrimination against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992, para. 1, <http://www.refworld.org/docid/52d920c54.html>

108 CEDAW, art. 5(a).

109 CEDAW, art. 5(b).

110 CEDAW, art 1. (1).

111 *CEDAW General Recommendation No. 19: Violence against women*, 1992, para. 17.

112 CEDAW, art 1. (2).

113 Mexican General Law on Equality Between Women and Men, 2006, [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIMH\\_140618.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIMH_140618.pdf).

114 CEDAW, art 7.

115 Federal Code on Institutions and Electoral Procedures, 2008, art. 218.3, [http://ieepco.org.mx/biblioteca\\_digital/legisla-](http://ieepco.org.mx/biblioteca_digital/legisla-)

requirement for political parties. However, it has been abused in a multitude of ways. For example, women are sometimes forced to run in districts in which the party is guaranteed to lose. In another case, women, once elected, step down and allow a male counterpart, often a husband, to hold office.<sup>116</sup>

Despite the 2006 Federal Law on Equality between Men and Women, the actual fulfillment of Mexico's obligations under CEDAW have been lacking. In its most recent comments on Mexico's country report, CEDAW expressed concern with the low economic participation of women, the gender pay gap, and "unequal distribution of domestic and care work between women and men...[forcing] many women into low-income part-time jobs in the informal sector."<sup>117</sup> Although the legal foundations against gender discrimination already exist in Mexico, implementation remains a problem.

## i. International Labour Organization (ILO)

Other critical international human rights documents that Mexico has ratified include several ILO conventions. Mexico's 2017 constitutional reform was instrumental in ensuring compliance with the ILO conventions that it has signed onto, such as the Freedom of Association and Protection of the Right to Organise Convention (No. 87), the Equal Remuneration Convention (No. 100), and the Discrimination (Employment and Occupation) Convention (No. 111), as well as the most recent signing of the Right to Organise and Collective Bargaining Convention (No. 98).

ILO conventions No. 87 and No. 100, which have been in effect in Mexico since the early 1950s, highlight the right to organize, elect representatives without employer interference, as well as equal remuneration for work

of equal value.<sup>118</sup> Mexico has already established equal remuneration as a constitutional right. Thus, this illustrates the state's nominal commitment to eradicating wage discrimination between genders. Furthermore, in 1961, convention No. 111 came into force in Mexico. This convention specifically focuses on discrimination. All signatories must ensure that they "pursue a national policy designed to promote...equal opportunity and treatment."<sup>119</sup>

In practice, the state has adopted reforms to certain laws to meet its international obligations. ILO No.100 defines remuneration and equal remuneration as the "the minimum wage or salary...by the employer to the worker and arising out of the worker's employment... without discrimination based on sex..." In March of 2017, the Mexican Congress approved a reform to further incorporate the law for equal wage between men and women as a way to combat gender discrimination and economic and labor violence.<sup>120</sup> This law complies with the Constitutional and Federal Laws on Work and on Gender Equality. It also falls in accordance with ILO No. 100.

Furthermore, the November 30, 2012 amendment to sections 2 and 3 of the Mexican Federal Labor Law gave effect to Mexico's legal obligations under Convention No. 111, establishing the prohibition of discrimination concerning "ethnic or national origin, gender, age, disability, social status, state of health,

118 International Labor Organization (ILO), *Freedom of Association and Protection of the Right to Organize Convention (No. 87)*, July 1948, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232). ;International Labor Organization (ILO), *Equal Remuneration Convention (No. 100)*, June 1951, art.3.3, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C100](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100).

119 International Labor Organization (ILO), *Discrimination (Employment and Occupation) (No.111)*, June 1958, art.2, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111).

120 Mexican Chamber of Deputies, "Note 6271", 3 March 2017, <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2017/03-Marzo/14/6271-Aprueban-diputados-reforma-para-incorporar-en-la-ley-mecanismos-tendientes-a-fomentar-la-igualdad-salarial-entre-la-mujer-y-el-hombre>.

cion/COFIPE.pdf ; Mexican Constitution of 1917, art.41.

116 Glover, "Mexico Seeks to Empower Women in Politics."

117 Committee on the Elimination of Discrimination against Women, *Concluding observations on the ninth periodic report of Mexico*, 20 July 2018, 39(c), [https://ilsb.org.mx/wp-content/uploads/2018/07/INFORME\\_CEDAW\\_MEXICO\\_2018\\_ENGLISH.pdf](https://ilsb.org.mx/wp-content/uploads/2018/07/INFORME_CEDAW_MEXICO_2018_ENGLISH.pdf).

religion, migration status, opinions, sexual preference, and marital status.”<sup>121</sup> Section 56 of the same amendment prohibits discrimination related to sex, pregnancy, or family responsibilities.<sup>122</sup> Further, Section 113 prohibits forced pregnancy testing, in that employers cannot require women to possess certificates confirming that they are not pregnant.<sup>123</sup> During the 2016 periodic review for Convention No. 111, the ILO expressed concerns about the specific application of Section 113, requesting that Mexico provide more information on its application.<sup>124</sup> This particular convention has not been up for periodic review with the ILO since 2014, and therefore, the response of Mexico to these ILO concerns is not available.

Mexico most recently signed Convention No. 98, which establishes the right to organize and the right to collective bargaining. The first two articles proclaim that unions should be protected from “acts of interference” as well as anti-union discrimination.<sup>125</sup> Although this does not go into force until November 2019, the signing of this convention demonstrates Mexico’s commitment to independent unions.

Per the Mexican constitution, the state must ensure that its domestic laws are consistent with ratified international treaties. If Mexico can successfully implement collective bargaining rights for its workers such that unions are accessible, transparent, and advocate for the rights of workers, rather than factory owners, it will be a particularly important step for labor protections. The lack of effectiveness of unions is an oft-cited contributor to poor labor conditions and benefits in Mexi-

co. Other areas of difficulty that have been singled out by experts include issues of familiarity with the law, meaning that public and local officials are not aware of all the laws that protect their rights, and the issue of grievance mechanisms for workers to request labor inspections.

## ii. Business and Human Rights

The issue of business and human rights is one to which the international community is increasingly turning its attention. The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, created a voluntary international framework for companies and states on business and human rights. The framework, composed of three pillars, touches on the importance of the state’s duty to protect human rights, companies’ responsibility to respect human rights, and the right to access a remedy if rights have been violated.<sup>126</sup> The goal of the UNGPs is to bridge the governance gap between companies and states to ensure that human rights are protected. This bridge is particularly important in the Mexican context considering that a significant part of Mexico’s GDP comes from exports.

As part of the UNGPs, states are encouraged to create a National Action Plan (NAP). Mexico has been developing its NAP since 2014 but has been delayed in releasing it. Its NAP stems from its National Human Rights Program (2014-2018), which outlines the government’s objectives regarding human rights.<sup>127</sup> It focuses on four broad goals: strengthening mechanisms and guarantees for human rights, encouraging companies to create their human rights policies, promoting legislation that regulates companies’ human rights policies, and working closely with companies to help them know their obligations towards human rights. However, at the time of this report’s publication, there

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121 International Labor Organization, 24 March 2019, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3296885:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3296885:NO)

122 International Labor Organization, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3296885:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3296885:NO)

123 International Labor Organization, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3296885:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3296885:NO)

124 International Labor Organization, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3296885:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3296885:NO)

125 International Labor Organization (ILO), *Right to Organize and Collective Bargaining Convention (No. 98)*, July 1949, art.2, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312243](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_INSTRUMENT_ID:312243).

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126 United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, and Remedy’ Framework*, 2011, [https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_eN.pdf](https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf).

127 Government of the Republic of Mexico, *National Human Rights Program: 2014-2018*, <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2018/08/mexico-pndh-2014-18.pdf>.



have been no announcements to renew this program.

The UN Human Rights Council Special Procedures' Working Group for Business and Human Rights' first official visit to Mexico took place in August 2016 to examine how the Mexican government and businesses were complying with the UNGPs.<sup>128</sup> On September 7, 2016, the group issued a statement summarizing their findings, pointing to labor rights as a major business and human rights issue in Mexico. Specifically, the group identified the weak capacity to enforce labor standards, restrictions on freedom of association of workers, child labor, and the difficulties of agricultural day laborers.<sup>129</sup> Additionally, the group noted that the participation of women in the labor force was, at the time of the publishing of the report, the lowest of any Latin American country. High rates of women in the labor force reported discrimination and sexual harassment in their workplaces. Further, the experts reported a general lack of awareness of the UNGPs among businesses in Mexico.<sup>130</sup>

### iii. UN Development Goals

Another UN initiative pertinent to the rights of women in Mexico is the UN Development Goals. The current Sustainable Development Goals (SDGs), and their founding program, the Millennium Development Goals (MDGs), strive to eradicate global poverty by 2030. MDG 3 called for the promotion of gender equality and the empowerment of women. Specifically, the goal called for the elimination of gender disparity in education by 2015.<sup>131</sup> The deadline of the MDGs

passed in 2015, ushering in the SDGs which pushed the goalpost on achievement indicators. SDG 5 calls for the achievement of gender equality and empowerment of all women and girls. In addition to the general goal being more ambitious, the SDG also increases the number of specific indicators necessary for achievement, including ending all discrimination, eliminating violence, ensuring full and effective participation in economic, social, and public life, and recognizing the value of unpaid work, among others.<sup>132</sup> These SDGs are nonbinding; however, the UN notes that “countries are expected to take ownership and establish a national framework for achieving the 17 goals.”<sup>133</sup>

Mexico takes the implementation and achievement of these goals seriously. In its 2013 Progress Report, Mexico reported almost complete compliance with MDG 3 with it just barely missing complete compliance in gender parity in primary education.<sup>134</sup> Turning to the SDGs, Mexico has shown a commitment to developing institutions and data collection mechanisms in order to streamline the implementation process. Notably, they launched a data portal which allows users to interact with their progress on achieving each goal, making it one of only five countries to have such a dashboard.<sup>135</sup> In its 2018 Voluntary National Review (VNR) for the SDGs, Mexico demonstrated awareness of implementation issues in gender equality. Furthermore, the Mexican government recognized the gender pay gap, as well as discrepancies in the application of laws between the state and the federal government.<sup>136</sup> Specifically, the VNR describes the need for state

128 “Resolution adopted by the Human Rights Council: Human Rights and Transitional Corporations and other business enterprises,” *United Nations*. July 6, 2011. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>

129 “Resolution adopted by the Human Rights Council: Human Rights and Transitional Corporations and other business enterprises,” *United Nations*.

130 “Resolution adopted by the Human Rights Council: Human Rights and Transitional Corporations and other business enterprises,” *United Nations*.

131 “Millennium Development Goal 3,” *United Nations*, Accessed on: May 10, 2019. <https://www.un.org/millenniumgoals/gender.shtml>.

132 “Sustainable Development Goal 5,” *The United Nations*.

133 “The Sustainable Development Agenda,” *The United Nations*.

134 “Los Objetivos de Desarrollo del Milenio en Mexico,” *Instituto Nacional de Estadística y Geografía*, 2013, Accessible through: <https://www.undp.org/content/undp/en/home/librarypage/mdg/mdg-reports/lac-collection.html>.

135 INEGI, “Sistema de Informacion de los Objetivos de Desarrollo Sostenible, Mexico.”

136 Mexican Federal Government, *Voluntary National Review for the High-Level Political Forum on Sustainable Development: Basis for a Long-Term Sustainable Development Vision in Mexico*, 2018. [https://sustainabledevelopment.un.org/content/documents/20122VOLUNTARY\\_NATIONAL\\_REPORT\\_060718.pdf](https://sustainabledevelopment.un.org/content/documents/20122VOLUNTARY_NATIONAL_REPORT_060718.pdf)

“governments [to] harmonize their laws and regulations with the National Policy on Equality Between Women and Men.”<sup>137</sup> Although they are nonbinding, the transparency and highly publicized status of progress in achieving the UN Development Goals provides a mechanism of international peer pressure for making real improvements in important social development indicators.

#### d. Trade Law

Finally, Mexico has also taken on international obligations through its ratification of regional trade agreements. In addition to the obligations arising from these agreements, a WTO Panel referring to Article 31(3)(c) of the Vienna Convention on the Law of Treaties established that customary international law is relevant in the application of trade law.<sup>138</sup> The Appellate Body and Panels of the WTO should thus interpret WTO law in conformity with international customary law whenever possible, including human rights law.<sup>139</sup> However, when customary law is inconsistent with WTO norms, a panel ruled that customary law cannot supersede trade law.<sup>140</sup> Given these circumstances, it appears unlikely that a WTO dispute settlement body would decide that human rights obligations prevailed over WTO obligations unless a human rights issue was found to be *jus cogens*—norms that cannot be derogated from. Regardless, these panel rulings are significant. While trade law is under no obligation to promote human rights, trade measures cannot explicitly contradict or

deprive persons of human rights.

#### i. Regional Trade Agreements (RTA)

A regional trade agreement (RTA) allows parties to offer each other more favorable treatment in trade than other trading partners, in addition to whatever stipulations parties of the agreement settle on.<sup>141</sup> Such discriminatory treatment would generally be inconsistent with basic principles of WTO law, but RTAs are permissible if specific requirements are met.<sup>142</sup>

Unlike WTO law, RTAs between trading partners offer more than just favorable treatment. Increasingly, RTAs include human rights principles, labor standards, transparency requirements, restrictions on corruption, and environmental criteria that trading partners must uphold. Labor provisions are the most common stipulation in preferential trade agreements. According to the ILO, over 80 percent of trade agreements convened since 2013 have included labor provisions of some kind.<sup>143</sup>

#### ii. North American Free Trade Agreement (NAFTA)

NAFTA was one of the first RTAs to include human rights and environmental provisions. These provisions were included in a later corresponding accord, the North American Agreement on Labor Cooperation (NAALC). Though the provisions were aimed to protect labor rights, the NAALC fails to reference relevant international labor standards or establish any minimum labor protections. Instead, the NAALC calls upon each party to “ensure that its labor laws and regulations provide for high labor standards.”<sup>144</sup> The NAALC provided

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137 Mexican Federal Government, *Voluntary National Review*, 78.

138 According to the Vienna Convention any relevant rules of international law applicable to the relations between the parties’ should be taken into consideration when interpreting a treaty. United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <https://www.refworld.org/docid/3ae6b3a10.html> [accessed 11 April 2019]

139 *Korea—Measures Affecting Government Procurement*, WTO doc. WT/DS163/R (19 June 2000) (Report of the Panel) para 7.96. [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds163\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds163_e.htm).

140 World Trade Organization, *EC—Measures concerning Meat and Meat Products (‘EC—Hormones’)*, WTO doc. WT/DS48/AB/R (16 January 1998) (Report of the Appellate Body) [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds26\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm).

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141 Regional trade agreements can also be referred to as preferential trade agreements (PTAs) or free trade agreements (FTAs).

142 Generally, these requirements involve the reduction of tariffs to a particular level and/or a currency union according to Article XXIV and the Enabling Clause of the GATT 1994 as well as Article V of the GATS.

143 International Labour Organization. *International Labour Organization Handbook: On Assessment of Labor Provisions in Trade and Investment Arrangements*. (Geneva, Switzerland: International Labour Organization, 2017).

144 “North American Agreement on Labor Cooperation,” Signed September 13, 1993, *Government of the United States*, Accessed 9 April 2019. <https://www.dol.gov/ilab/reports/pdf/>



dispute settlement for any parties' failure to enforce its occupational safety and health standards, child labor laws, and minimum wage. However, in comparison to NAFTA, violations of the NAALC were met with far weaker dispute settlement processes and sanctions.

Since the NAALC was signed and ratified by all three governments, there have been 39 submissions.<sup>145</sup> Of these, 25 complaints were made in regards to labor violations in Mexico, and seven were explicitly related to breaches in *maquiladoras*. These *maquiladora* sector violations included collective bargaining, gender discrimination, workplace safety, overtime pay, as well as others.<sup>146</sup> In each of these cases, the weakness of the NAALC's dispute settlement mechanism is apparent.

To handle disputes, the NAALC created the Commission for Labor Cooperation and National Administrative Offices (NAOs) in each country. The goal of these offices is to create a forum for formal and informal cooperative consultations to resolve issues. Under the NAALC, sanctions in the form of a monetary penalty or the withholding of trade benefits can only be used if a Party persistently fails to enforce child labor laws, minimum wage, or occupational health and safety standards.<sup>147</sup> To date, sanctions have never been applied under the NAALC as the scope for applying sanctions is narrow.

Two NAALC cases are particularly relevant to this analysis. The *Han Young Case*, filed in 1997, involved a *maquiladora* that manufactured car parts for Hyundai in Tijuana, Mexico. After an injured worker filed a complaint regarding workplace safety, a year-long conflict between workers and the plant began over the

naalc.htm.

145 Bureau of International Labor Affairs, "Submissions under the North American Agreement on Labor Cooperation," Department of Labor, Accessed 9 April 2019. <https://www.dol.gov/ilab/trade/agreements/naalc.htm>.

146 These seven *maquila* specific NAALC cases include *Han Young Case*, *Gender Discrimination Case*, *Auto Trim/Custom Trim Case*, *Puebla Case*, *Sony Case*, *General Electric Case*, and *Maxi Switch Case*.

147 Congressional Research Service, *Overview of Labor Enforcement Issues in Trade Agreements*, by Mary Boyle, (2016). <https://fas.org/sgp/crs/misc/RS22823.pdf>

right to collectively bargain. Attempts to previously unionize were met with intimidation and threats by the employer. The NAALC was incapable of handling the dispute despite numerous U.S. NAO hearings and ministerial agreements on the matter. Though ultimately, a Mexican federal court ruled in favor of the striking workers and a public seminar was held in Tijuana on the right to bargain collectively, the plant was moved to the other side of the city, and all of the workers were fired.<sup>148</sup>

The same year another case involving gender-based discrimination in the *maquiladora* industry was filed by Human Rights Watch (HRW), the International Labor Rights Fund, and the National Association of Democratic Lawyers of Mexico. According to U.S. NAO Submission 9701, women were frequently required to verify their pregnancy status as a condition of employment in *maquiladoras* throughout Mexico. Women found pregnant during their job interviews were often denied employment. The submission further implicated employers, some of whom were subsidiaries of U.S. companies, of mistreating or firing pregnant employees to avoid providing the maternity benefits mandated by Mexican law. Though the practice of pregnancy testing has decreased, antipathy for pregnant women in the workplace continues to be a common problem in *maquiladoras*.<sup>149</sup>

### iii. US-Mexico-Canada Agreement (USMCA)

As previously mentioned, NAFTA was renegotiated in 2018 as the USMCA, updating the labor provisions associated with NAFTA. Chapter 23 of the USMCA requires Mexico, Canada, and the U.S. to adopt, maintain, and enforce labor laws established by the ILO's Fundamental Conventions.<sup>150</sup> Explicit attention is giv-

148 U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Department of Labor, "*Public Report of Review of Submission No. 9702*," (1998). [https://www.dol.gov/ilab/reports/pdf/Public%20Report%209702%20\(Han%20Young\).pdf](https://www.dol.gov/ilab/reports/pdf/Public%20Report%209702%20(Han%20Young).pdf).

149 U.S. National Administrative Office, *Public Report of Review of Submission No. 9701*; Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

150 Refers to the International Labour Organization (ILO)

en to banning forced or compulsory labor, eradicating violence and eliminating discrimination in the workplace, raising minimum wage standards in Mexico for automotive workers, and ensuring migrant workers are included in labor protections regardless of nationality.<sup>151</sup> Unlike the NAALC, the new labor obligations under the USMCA are enforceable under the general dispute mechanism.

Additionally, NAFTA's non-specific labor protections will soon be replaced with collective bargaining requirements in Annex 23 of the USMCA. Annex 23 requires Mexico to recognize and guarantee collective bargaining rights effectively. This annex explicitly highlighted Mexico's compliance with ILO No. 98, and further prohibited the Mexican government from engaging in practices that might interfere or influence the activities of labor unions. The USMCA and ILO No. 98 prohibit efforts to coerce or discriminate against workers attempting to exercise their right to collective action.<sup>152</sup>

Finally, the USMCA contains some reference to gender. Although Canada originally suggested an entire chapter of the USMCA devoted to gender, this notion was eventually dropped during negotiations. Still, references to gender are made throughout the USMCA. In the labor chapter, in particular, the USMCA seeks to address "gender-related issues in the field of labour and employment," including eliminating discrimination in employment and wages; promoting equal pay for equal work; consideration of gender issues related to occupational safety and health, including child care and nursing mothers; and preventing gender-based workplace violence and harassment."<sup>153</sup> According to

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Convention 98. "Right to Organise and Collective Bargaining Convention," adopted July 1, 1949, *International Labour Organization*, Retrieved 9 April 2019. [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312243](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243).

151 USMCA requires that 40-45% of a car built in North America be built by workers earning at least \$16 per hour. "Agreement between the United States of America, the United Mexican States, and Canada," signed November 30, 2018, *Government of the United States*. Retrieved 9 April 2019. <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

152 "Agreement between the United States of America, the United Mexican States, and Canada," signed November 30, 2018.

153 "Agreement between the United States of America, the

Julia Quiñonez, coordinator for *Comité Fronterizo de Obrer@s* (CFO), the Border Committee of Workers, one of the main problems of NAFTA is that the agreement lacked a gender perspective. Quiñonez, who worked in *maquiladoras* for several years and is currently part of this committee that advocates for the rights of female *maquiladora* workers in northern Mexican states, affirms that the absence of a gender perspective in NAFTA had a disproportionate effect on women due to their already precarious condition in Mexican society.<sup>154</sup> The inclusion of gender in the USMCA is a significant step forward in addressing the rights of women and ensuring that the gains from trade are shared equally between women and men. However, it remains to be seen if USMCA will come into force. Though the agreement was signed in November of 2018, the national legislatures of Canada, Mexico, and the United States have not yet ratified the agreement.

#### iv. Other Regional Trade Agreements

Beyond NAFTA, Mexico is a member of 11 other regional and bilateral trade agreements spanning 44 additional countries. Of these 11, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the recently revised European Union-Mexico FTA both include additional provisions for labor rights. The CPTPP, though not yet ratified by Mexico, has a chapter entirely devoted to labor. Similar to the USMCA, parties of the CPTPP are required to adopt, maintain, and enforce a set of minimum labor laws established by the ILO Right to Organise and Collectively Bargain Convention. The CPTPP provides robust dispute settlement mechanisms which can be accessed by any party and engage members of the public.<sup>155</sup>

The EU-Mexico FTA, signed in 2000 and revised in 2018, includes a chapter on sustainable development. This chapter asks parties to respect, promote, and implement fundamental ILO Conventions particularly concerning women, the elderly, and those with disabili-

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United Mexican States, and Canada," signed November 30, 2018.

154 Julia Quiñonez (Coordinator, Comité Fronterizo de Obrer@s, CFO), in discussion with the authors, January 2019.

155 See Chapter 11 on Labour from the "Comprehensive and Progressive Agreement for Trans-Pacific Partnership," opened for signature March 5, 2018, *From the Government of New Zealand*. Retrieved 9 April 2019. <https://www.mfat.govt.nz/assets/Trans-Pacific-Partnership/Text/19.-Labour-Chapter.pdf>.

ities.<sup>156</sup> Additionally, this chapter creates a forum for Mexico and the EU to discuss issues regarding human rights, security, and justice. Though a dispute settlement mechanism is included in this chapter, the language of the trade agreement is weak and less specific compared to the protections and mechanisms in the labor chapter of the CPTPP and the USMCA.

If these three regional trade agreements go into effect, Mexico has significant labor obligations to meet by 2020. However, these obligations do not require significant changes in the law. Rather, enforcement is Mexico's biggest future hurdle in complying with these trade agreements.

Even after WTO accession and numerous trade agreements with labor provisions, women in Mexico remain left behind. According to a report in June 2018, over 8,000 sexual harassment complaints were investigated by the Mexican Ministry of Labor between 2013 and 2016. Of these, only 91 resulted in sentencing.<sup>157</sup> Accordingly, some Mexican NGOs have expressed reservations about the effectiveness of labor provisions in free trade agreements.<sup>158</sup> Moving forward, a more in-depth analysis of the well-being of women in the workforce is needed to understand the measures that trade agreements should include to ensure the benefits of trade take into account the needs of women.

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156 Mexico ratified ILO Convention No. 98 in 2018. See Chapter XX, Trade and Sustainable Development from “Modernisation of the Trade part of the EU-Mexico Global Agreement Without Prejudice,” *From the European Union*. Retrieved 9 April 2019. [http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc\\_156822.pdf](http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156822.pdf).

157 Office of the High Commissioner for Human Rights. *Shadow Report on employment discrimination against women in Mexico* (Geneva, Switzerland: OHCHR, 2018). [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\\_CEDAW\\_NGO\\_MEX\\_31406\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_31406_E.pdf).

158 Chris Mendoza (Coordinator of the Program on Gender and Economic, Cultural, and Social Rights, Simone de Beauvoir), in discussion with the authors, January 2019; Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.



Although women increased their participation in the labor force as a result of trade liberalization, there are documented negatives which include its volatility and the weak organizing capacity permitted to women.





# PART II

## Applied Economic Theory

This section will examine the welfare effects that trade liberalization has had on women through earnings and economic participation. It will begin by examining how trade liberalization in Mexico fits into a more general discussion of relevant trade theories. It then continues by examining empirical findings to test the robustness of these trade theories in practice. Finally, it concludes by delineating some of the positive and negative effects of this trade liberalization on women's economic participation.





## A. Conceptual Framework

The prominent trade theories that help explain the relationship between trade liberalization and working women in Mexico include Heckscher-Ohlin, Stolper-Samuelson, and Becker. Heckscher-Ohlin predicts that trade results in producing goods/services for export, based on the relatively abundant and cheap input factors found in the economy. Theoretically speaking, in the case of Mexico, Heckscher-Ohlin would predict that Mexico would specialize in semi- and unskilled labor, given that it is their abundant factor of production relative to the United States. Stolper-Samuelson builds on this theory by predicting that trade will cause the relative price of that good/service to increase inside that country because the economy is now concentrating on producing that good/service for export. Continuing with the case of Mexico, this theory would predict that the relative price of semi- and unskilled labor would rise due to trade liberalization. These theories relate to gender parity insofar as women tended to have fewer observable job skills than men in pre-trade liberalization in Mexico. Post-liberalization then

should result in: the economy shifting towards using semi- and low-skilled factors of production (e.g., women), a relative price increase in this semi- and low-skilled work, and eventually, a decrease in the gender wage gap.<sup>159</sup>

Becker's theory posits that gender discrimination is inefficient. The theory reasons that gender discrimination might work in non-competitive markets because firms will have excess profits that they can use to 'purchase discrimination.' However, when markets open up to competition, this discrimination prohibitively raises the cost to the firm.<sup>160</sup> The strong *machismo* culture in Mexico, coupled with the ISI policies of the 1980s, fostered exactly this sort of non-competitive environment which allowed for discrimination. Given this context of pre-trade liberalization, Becker's

159 Wendy Cunningham and Raquel Artecona, *Effects of Trade Liberalization on the Gender Wage Gap in Mexico*, (The World Bank Development Research Group, May 2002), <http://siteresources.worldbank.org/INTGENDER/Resources/tradeartecona.pdf>.

160 Cunningham and Artecona, *Effects of Trade Liberalization*.



theory would predict that trade liberalization would debilitate these firms if they chose to continue to discriminate when faced with competition. To examine the economic welfare impacts of trade on female laborers, this report will use the case of *maquiladoras* to examine whether trade liberalization did indeed lead to increased female labor force participation, gender wage parity, and decreased labor force discrimination.

## B. Heckscher-Ohlin/Stolper Samuelson Theory

The explosion of the *maquiladora* industry, and subsequent female labor force participation, provides support for the validity of the Heckscher-Ohlin/Stolper Samuelson theories. However, due to the difficulty of isolating the causal effect of trade on overall women's economic participation, scholars have taken a more granular approach to tease out the dynamic of this relationship. At this more micro level, some ambiguities exist about whether or not trade had a positive effect on women's economic participation. For example, in terms of positions requiring low-skilled labor, trade improved female outcomes, yet this improvement was not observed in more white-collared (e.g., managerial) positions.<sup>161</sup> One reason given for this continued segmentation of women into the lowest-skilled jobs is the difference in opportunities for on-the-job training. Specifically, women received only eight days of training on average compared to an average of 22 days for men.<sup>162</sup> In another study, De Hoyos found that increased female participation was related to the relationship between the woman and the head of the household. For wives, their likelihood of being employed in the formal sector was negatively correlated with their husband's participation in the labor force (a relationship which is increasingly becoming more independent); however, for daughters, their likelihood

of being employed in the formal sector is positively correlated with their father's participation in the labor force.<sup>163</sup>

## C. Becker's Theory

Researchers have also applied Becker's theory to the *maquiladora* sector. Cunningham, et al. found support for Becker's hypothesis that increased competition and lowered excess rents, necessitated by lower trade barriers, resulted in decreased wage discrimination of female employees.<sup>164</sup> Furthermore, research shows that the gender wage gap was less pronounced in *maquiladoras* than in non-*maquiladoras*. In the non-*maquiladora* sector, a female worker earns 27.7 percent less on average than a comparable male worker. In contrast, female workers in the *maquiladora* sector earn only 12.2 percent less on average than a comparable male worker.<sup>165</sup> Additionally, the gender wage ratio is higher in the *maquiladora* sector than in the manufacturing sector overall (87 and 75 percent, respectively, for 2005).<sup>166</sup> Between 1994 to 2005, average real wages decreased 1.9 percent annually in the non-*maquiladora* sector, yet increased by 1.2 percent annually in the *maquiladora* sector.<sup>167</sup> These results provide evidence in support of the theory that trade plays a role in reducing the gender gap in sectors subject to international competition.

163 Rafael E. De Hoyos, "Chapter 3: Female Labor Participation and Occupation Decisions in Post-NAFTA Mexico," in *Research in Labor Economics*, edited by Solomon W. Polachek, Konstantinos Tatsiramos, (Emerald Group Publishing Limited, 2011), [https://www.emeraldinsight.com/doi/abs/10.1108/S0147-9121\(2011\)0000033006](https://www.emeraldinsight.com/doi/abs/10.1108/S0147-9121(2011)0000033006).

164 Cunningham and Artecona, *Effects of Trade Liberalization*.

165 Gautam Hazarika and Rafael Otero, "Foreign Trade and the Gender Earnings Differential in Urban Mexico," *Journal of Economic Integration* 19, no. 2, (June 2004): 353-373, <https://www.jstor.org/stable/23000785>.

166 Lilia Domínguez-Villalobos and Flor Brown-Grossman, "Trade Liberalization and Gender Wage Inequality in Mexico," *Feminist Economics* 16, no. 4 (October 2010): 53-79, <https://doi.org/10.1080/13545701.2010.530582>.

167 Domínguez-Villalobos and Brown-Grossman, "Trade Liberalization and Gender Wage Inequality in Mexico,"

161 Chinhui Juhn, Gergely Ujhelyi, and Carolina Villegas-Sanchez, *Men, Women, and Machines: How Trade Impacts Gender Inequality*, (National Bureau of Economic Research, May 2012), <http://www.nber.org/papers/w18106>.

162 Kathryn Kopinak, "Gender as a Vehicle for the Subordination of Women Maquiladora Workers in Mexico," *Latin American Perspectives* 22, no. 1 (Winter, 1995): 30-48, <https://www.jstor.org/stable/2634282>.

There is also evidence to the contrary which has found that women in the *maquiladora* sector did not benefit from trade. Between 1987 and 1999, the female-male earnings ratio increased by 4.40 percent in the non-*maquiladora* sector yet decreased by 11.31 percent in the *maquiladora* sector.<sup>168</sup> Furthermore, not only are women discriminated into lower-paying jobs, but an interindustry wage gap exists among *maquiladora* industries which specifically affects women because they tend to be concentrated in the lower-paying industries (e.g. food and apparel).<sup>169</sup>

## D. Effect on Women

The empirical evidence provided above demonstrates that the effects of trade on the female labor force remain ambiguous. The aforementioned liberalization policy created the opportunity for women in Mexico to accelerate their participation in the formal labor force: in the period from 1990 to 2005, women increased their participation in the labor force by an estimated 146 percent.<sup>170</sup> *Maquiladoras*, in particular, hold a place of importance for female laborers. For over 30 years, they employed an overwhelming majority of women (about 85 percent of total *maquiladora* labor force).<sup>171</sup> Trade liberalization contributed to this positive result of increased participation in a sector that affords higher wages relative to the non-*maquiladora* sector, as described above. However, there are documented negative effects of trade liberalization specific to this sector. These include its volatility and the weak organizing capacity permitted to women, which make

it difficult to argue that trade liberalization was overall welfare-improving for women.

The first negative effect is the high worker turnover and the lack of job security which characterize this industry. Though the *maquiladora* program was designed to absorb the unemployed men after the termination of the *bracero* program, *maquiladora* employers targeted young and single women as they were easily replaceable and accepted lower wages than men.<sup>172</sup> A telling testimonial of this preference for women is from supervisors of auto-part *maquiladoras* who stated that “whereas men and women were comparable in productivity, women made fewer claims than men before the *Junta Local de Conciliación y Arbitraje* concerning the violation of their legal rights as workers.”<sup>173</sup> Women’s economic participation in the northern states provides a second piece of evidence for this preference for women. In 2010, the northern states, where *maquiladoras* are most prevalent, boasted the second highest rate of women’s economic participation after Mexico City.<sup>174</sup> The exploitation of these ingrained cultural norms contributes to the lack of job security and high worker turnover because employers routinely employ women on temporary contracts, which provide access only to a limited range of the non-wage benefits designated under Mexican legislation.<sup>175</sup> Additionally, studies have shown that employment in the *maquiladora* sector in particular is volatile. Bergin et al. studied the difference in volatility in terms of the number of plants operating on a monthly basis in Mexico’s *maquiladora* sector and comparable industries in the United States. They showed that the industries in Mexico are twice as volatile, considerably robust even when controlling for the volatility in the Mexican economy and the smaller

168 Hazarika and Otero, “Foreign Trade and the Gender Earnings Differential in Urban Mexico.”

169 Susan Fleck, “A Gender Perspective on Maquila Employment and Wages in Mexico,” in *The Economics of Gender in Mexico: Work, Family, State, and Market*, ed. Elizabeth G. Katz and Maria C. Correia, (Washington, DC: The World Bank, April 2001), 133-173. <http://documents.worldbank.org/curated/en/288701468121498166/The-economics-of-gender-in-mexico-work-family-state-and-market>.

170 Aurelie Charles, “Fairness and Wages in Mexico’s Maquiladora Industry: An Empirical Analysis of Labor Demand and the Gender Wage Gap,” *Review of Social Economy* 69, vol. 1 (March 2011): 1-28, <https://www.jstor.org/stable/41288425>.

171 Patricia Fernández-Kelly, “Gender and Economic Change in the United States and Mexico, 1900-2000,” *American Behavioral Scientist* 52, no.3 (November 2008): 377:404, <https://doi.org/10.1177/0002764208323512>.

172 Fernández-Kelly, “Gender and Economic Change.”

173 Kathryn Kopinak, “Gender as a Vehicle for the Subordination of Women Maquiladora Workers in Mexico,” *Latin American Perspectives* 22, no.1 (Winter, 1995): 30-48, <https://www.jstor.org/stable/2634282>.

174 Rafael Garduño-Rivera, “Factors That Influence Women’s Economic Participation in Mexico,” *Economía Mexicana. Nueva Época* Cierre de Época, no. 2 (September 2013): 547-8, <http://www.redalyc.org/articulo.oa?id=32329695007>. \*Note: author’s calculations using Inegi’s XI Censo General de población y Vivienda data, 1990 and 2010.

175 Domínguez-Villalobos and Brown-Grossman, “Trade Liberalization and Gender Wage Inequality in Mexico.”



firm size in Mexico.<sup>176</sup> This vulnerability threatens job security for all workers in the sector; however, it is most problematic for women due to their overrepresentation, as previously mentioned.

There is widespread agreement that the expansion of trade did not provide women additional channels through which to organize. Women in the *maquiladora* sector have attempted to unionize; however, there have been difficulties in generating significant bargaining power due to tight controls on the labor force, the fact that most ‘official’ unions have close political ties (and are thus supportive of NAFTA), and the weight of the informal sector.<sup>177</sup> Additionally, despite numerous international protections and changes to Mexican labor law, women continue to be left out of unions both in terms of participation and leadership.<sup>178</sup>

Finally, the gender wage gap has compounded these negative effects. The existence of this wage gap places women in a position of heightened vulnerability because real wages in Mexico have generally declined since 1982. The minimum wage has been maintained at a rate below inflation, halving in real dollar value between 1980 and 1998.<sup>179</sup> Thus, the existence of a gender wage gap in an economy where wages do not

keep up with inflation only heightens the precarization of women working in this sector.

This section has reviewed some of the empirics about the nexus between trade and women’s participation and examined the welfare effects using economic measures. It showed that trade enabled female participation in the labor force and provided access to a formal channel through which they could earn money; however, creating judgments about overall welfare effects requires a multi-faceted analysis. Therefore, the report will continue by examining other important factors that are not economic in nature but are equally important for evaluating overall welfare, such as labor conditions, security in the workplace, and gender-based violence.

176 Bergin, Feenstra, and Hanson, “Offshoring and Volatility”.

177 C. Gabriel and Laura Catharine Macdonald, “NAFTA, Women and Organising in Canada and Mexico: Forging a ‘Feminist Internationality’,” *Millennium Journal of International Studies* 13, vol. 3 (March 1994): 535-562, [https://www.researchgate.net/publication/249837460\\_NAFTA\\_Women\\_and\\_Organising\\_in\\_Canada\\_and\\_Mexico\\_Forging\\_a\\_Feminist\\_Internationality](https://www.researchgate.net/publication/249837460_NAFTA_Women_and_Organising_in_Canada_and_Mexico_Forging_a_Feminist_Internationality); Aurelie Charles, “Fairness and Wages in Mexico’s Maquiladora Industry,” *Review of Social Economy* 69, no. 1 (March 2011): 1-28, <https://www.jstor.org/stable/41288425>.

178 <https://vanguardia.com.mx/articulo/pena-gasto-menos-en-la-lucha-por-la-igualdad-de-la-mujer-que-en-prensa>.

Chris Mendoza (Coordinator of the Program on Gender and Economic, Cultural, and Social Rights, Simone de Beauvoir), in discussion with the authors, January 2019.

179 Susan E. Fleck, “A Gender Perspective on Maquila Employment and Wages in Mexico” in *The Economics of Gender in Mexico: Work, Family, State, and Market*, ed. Elizabeth G. Katz and Maria C. Correia (Washington, DC: The World Bank, April 2001); Domínguez-Villalobos and Brown-Grossman, “Trade Liberalization and Gender Wage Inequality in Mexico.”



Despite existing guarantees in trade agreements and national legislation, protection gaps result from the Mexican government's endemic corruption as well as the lack of capacity and willingness to enforce labor provisions.





# PART III

## Protection Gaps in Mexico

This section will outline the protection gaps in workers' rights despite existing guarantees in trade agreements and national legislation. These gaps result from the Mexican government's endemic corruption as well as the lack of capacity and willingness to enforce labor provisions. Finally, while some multinational corporations operating within Mexico attempt to ameliorate the protection of workers' rights, their mechanisms are ultimately too limited to offer a sustainable solution to the state's failure to adequately enforce labor protections across the formal economy.

While NAFTA included basic labor protection provisions, there is no evidence that domestic legislative reforms were implemented that specifically aligned domestic labor protection to NAFTA standards. By contrast, as discussed in Part I, the Mexican government is currently taking steps to reform domestic labor provisions in preparation for the USMCA.<sup>180</sup> However, there are several structural constraints to law enforcement within the country that present formidable challenges to the realization of such provisions across the economy.

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180 Rafael Bernal, "Mexico seeks to put to rest concerns over new trade deal," *The Hill*, February 26, 2019, <https://thehill.com/latino/431703-mexico-seeks-to-put-to-rest-labor-concerns-over-new-trade-deal>.



## A. Rule of Law

By many metrics, Mexico is a dangerous country with a low level of rule of law. In 2018, Mexico was ranked second to last within the Latin American and Caribbean region on the absence of corruption on the World Justice Project's Rule of Law Index.<sup>181</sup> In another ranking compiled by the Wilson Center, Mexico ranked 99 out of 126 countries in rule of law.<sup>182</sup> These rule of law issues include cartel violence, systematic and endemic corruption, and lack of state capacity and will to enforce its own laws, all of which have broad consequences for the ability of women workers in Mexico to exercise their rights as enshrined in Mexican law. In particular, the endemic corruption in much of Mexican governance operates as a constraint on the enforce-

181 WJP Rule of Law Index 2018, "Mexico," Accessed February 15, 2019, <http://data.worldjusticeproject.org/>.

182 Verónica Ortiz-Ortega, "Mexico's Battered Rule of Law," *The Wilson Center*, March 13, 2019, <https://www.wilsoncenter.org/article/mexicos-battered-rule-law>.

ment of labor protections and the general security environment.

### a. Security

In 2018, Mexico experienced a record-breaking 33,341 murders—a 15 percent increase since 2017—most of which were linked to cartels.<sup>183</sup> While these cartels participate in many types of criminal activity, including kidnappings, extortion, and oil theft, their primary activity is drug trafficking.<sup>184</sup> Less than 10 percent of homicides in Mexico are solved; between 2010 and 2018, the Mexican General Attorney's office investigated over 600 murders related to organized crime,

183 Christina Maxouris and Natalie Gallón, "Mexico Sets Record with more than 33,000 homicides in 2018," *CNN*, January 22, 2019, <https://www.cnn.com/2019/01/22/americas/mexico-murder-rate-2018/index.html>.

184 June S. Beittel, "Mexico: Organized Crime and Drug Trafficking Organizations," *Congressional Research Service*, July 3, 2018, <https://fas.org/sgp/crs/row/R41576.pdf>.



and won a guilty verdict in only two of those cases.<sup>185</sup> Corruption within law enforcement further contributes to this violence, as police take bribes from cartels in exchange for allowing the gangs to carry out their activities without consequence.<sup>186</sup> For instance, in a controversial 2014 case, corrupt local police officers in Iguala were engaged in a transactional relationship with a particular drug gang. In return for payment, the officers handed 43 college students, who were incorrectly believed to belong to a rival gang, over to the cartel. The gang is believed to have then killed all 43 of the students.<sup>187</sup> Cartel-related activity is thus an important issue affecting workers in Mexico, as cartel violence regularly goes beyond the bounds of the cartels themselves and affects the general population.

Cartel violence in some regions of the country often makes it difficult for both male and female workers to even travel to work. Many factories in northern Mexico are located in rural areas outside of main cities, and traveling to these areas for work is often dangerous for both men and women.<sup>188</sup> The dangers in the workers' commutes are illustrated in the previously discussed IACtHR case *González et al. ("Campo Algodonero") v. México*, known as the "Cotton Field Case." In this case, the bodies of three young women who had disappeared on their journeys to or from work were discovered in a cotton field near Ciudad Juárez, and all of the bodies showed signs of torture and sexual abuse.<sup>189</sup> This case highlights the dangers of long commutes in Mexico, particularly for women who are already in a vulnerable position.

As will be explained in a subsequent section, there are

185 David Luhnov, "Latin America is the Murder Capital of the World," *The Wall Street Journal*, September 20, 2018, <https://www.wsj.com/articles/400-murders-a-day-the-crisis-of-latin-america-1537455390>.

186 David Luhnov, "Latin America Is the Murder Capital of the World"

187 David Luhnov, "Latin America Is the Murder Capital of the World"

188 A coordinator of research at ProDESC, in discussion with the authors, January 2019.

189 London School of Economics Centre for Women, Peace, and Security, "Gonzalez, Monreal and Monarrez ("Cotton Field") v. Mexico," Accessed: March 20, 2019, <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/gonzalez-et-al-v-mexico/>.

strong gender norms in Mexican society that establish domestic work as the responsibility of women, making the decision to work outside the home a risky one. Dangerous commutes, then, are an additional barrier for Mexican women who wish to work outside of the home. This added barrier may lead women to decide to stay home and pursue the traditional roles of housewife and mother. Unfortunately, the fact that traveling to work can be such a danger is a factor that relatively few private-sector employers have addressed to ensure the protection of their workers.

## b. Systemic Corruption

Collective bargaining and unionization rights present a prime area in which corruption has directly undermined the enforcement of codified labor protections. As mentioned previously, the right to collective bargaining and unionization is enshrined in the Mexican Constitution. However, in practice, the unions established in accordance with this constitutional provision have more often been used to advance the company's interests rather than those of the employees. To comply with the right to workers' collective action, companies have themselves established "ghost" worker unions that heavily favor the employer's interests and actively undermine the formation of a true workers' union.<sup>190</sup> In many cases, these unions are formed before a factory is even operational through employer-led protection contracts, which effectively bar the establishment of other unions at that work location.<sup>191</sup> Additionally, as a coordinator of research at ProDESC explained, workers are often unaware of either the existence of these unions or the identity of their representative. When attempting to organize an actual union, workers can face threats of firing, forced disappearance, or death – all of which are illegal under Mexican law.<sup>192</sup> Moreover, when workers

190 John Otis, "How Mexico's pro-industry unions undermine workers' rights," *GlobalPost*, March 21, 2012, <https://www.pri.org/stories/2012-03-21/how-mexicos-pro-industry-unions-undermine-workers-rights>.

191 Allen Smith, "Mexican Congress Seeks to Reform Employer-Friendly 'White' Unions," *Society for Human Resource Management*, March 7, 2019, <https://www.shrm.org/resource-sandtools/legal-and-compliance/employment-law/pages/global-mexico-white-union-reform.aspx>.

192 A coordinator of research at ProDESC, in discussion with

do attempt to elect union representation per the law, their elections are often interrupted by agitators hired by the employer. This results in the elections being rescheduled by the Conciliation and Arbitration Boards (CABs) for several years later.<sup>193</sup> Finally, the registration of some trade unions has been thwarted by CABs outright. In a 2018 review, the ILO noted that several workers' associations report refusals from local authorities to register independent trade unions and highlighted one case of a trade union in the oil industry for which an application has been pending since 2014.<sup>194</sup>

Beyond collective bargaining, corruption has played a hand in undermining the legal protections of human rights defenders from private sector organizations. There have been reported instances of female human rights defenders being murdered. These events are situated within a broader context of persecution against human rights defenders in Mexico. Oftentimes, those who commit the transgressions are granted impunity.<sup>195</sup> In at least one instance, a company hired a gunman to murder a female labor activist, but the murder was covered up and not investigated by police.<sup>196</sup>

In apparent recognition of the country's ongoing issues with union action, the Mexican government ratified ILO Convention 98, which guarantees a worker's right to form unions and bargain collectively without the interference of their employer.<sup>197</sup> As mentioned earlier, this convention will not come into force in Mexico

until November 2019. As such, this report cannot assess its impact, but several civil society representatives questioned whether or not this convention – or the recent constitutional amendment – would truly change the undermining of collective action in the country. Additionally, while a representative of an approved social compliance firm was optimistic about the change, they expressed that even these new laws are “far from what we need [them] to be.”<sup>198</sup>

### c. Lack of State Capacity

In concert with the endemic corruption, the Mexican state has a distinct lack of capacity to enforce labor protections. Notably, Mexico has not ratified ILO Convention No. 81, the 1947 Labor Inspection Convention.<sup>199</sup> Although the Mexican Ministry of Labor has a staff of inspectors to enforce the country's labor laws, Mexico only has 10 percent of the ILO recommended number of labor inspectors nationally.<sup>200</sup> The ILO requires that a country staff a number of labor inspectors sufficient for effective monitoring based on the “number, nature, size, and situation of workplaces, the number of workers employed, and the number and complexity of the legal provisions to be enforced.”<sup>201</sup> However, the federal government only employs 521 labor inspectors nationally, 56 of which are located in Mexico City.<sup>202</sup> While Mexico City's Secretary of Labor employs an additional 16 labor inspectors, this means that there is a total of only 72 labor inspectors working in Mexico City, a city of 8.8 million people and location of many of the country's large factories. While Mexico plans to increase the number of employed labor inspectors to 50 percent of the ILO recommended number, there is no reported timeline for when this threshold will be

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the authors, January 2019.

193 A coordinator of research at ProDESC, in discussion with the authors, January 2019.

194 International Labor Organization, *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Mexico (Ratification: 1950)*, Accessed: March 24, 2019, [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3962314:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3962314:NO).

195 “Mexico/Rights defenders: ‘The best way to protect them is fighting impunity’ – UN expert,” United Nations Human Rights Office of the High Commissioner, January 25, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21117&LangID=E>.

196 A coordinator of research at ProDESC, in discussion with the authors, January 2019.

197 Monica Schiaffino and Rogelio Alanis. “Mexican Senate Approves the Ratification of Measure Impacting Labor-Management Relations,” *Littler*, 27 September 2018, <https://www.littler.com/publication-press/publication/mexican-senate-approves-ratification-measure-impacting-labor>.

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198 Representative from approved social compliance firm, in discussion with the authors, January 2019.

199 International Labour Organization, *Ratifications of CO81 - Labour Inspector Convention, 1947 (No. 81)*, Accessed: March 24, 2019, [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312226](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312226).

200 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

201 International Labor Organization, *Labour Inspection: what it is and what it does. A guide for workers*, Accessed: April 11, 2019, [https://www.ilo.org/labadmin/info/inst/WCMS\\_141403/lang--en/index.htm](https://www.ilo.org/labadmin/info/inst/WCMS_141403/lang--en/index.htm).

202 Data from the Secretaría Trabajo y Prevision Social—STPS from interview with Tomas Damerau, Secretarí del Trabajo y Fomento al Empleo de la Ciudad de Mexico.

met.<sup>203</sup>

Further, the labor inspections themselves are limited in scope. Audits are only conducted in organizations within the formal economy, effectively excluding 57 percent of the overall economy from social compliance oversight.<sup>204</sup> Additionally, audits are not conducted with third-party recruitment agencies, which are often used to recruit female labor for *maquiladoras*. These recruitment agencies have been alleged to have committed numerous labor rights violations and technically fall under Mexican jurisdiction, but there is no state auditing body monitoring their activities.<sup>205</sup> Finally, audits are not conducted in areas of the country deemed physically unsafe, which has led to the absence of audit oversight of many large suppliers of international brands located in the northern states bordering the United States.<sup>206</sup>

Unfortunately, the aforementioned restrictions mean that the factories and employers not audited by the labor inspectorate often have ongoing issues with labor conditions.<sup>207</sup> As a result of the restrictions on audit conditions and the small number of auditors, only approximately 360 audit inspections were completed in 2018.<sup>208</sup> As there are a vast number of labor sites in Mexico, the meager number of audit inspections completed indicates a significant likelihood that the Labor Inspectorate is unable to fulfill its mandate to ensure labor compliance across the formal economy.

Further, it has been alleged by multiple civil society organizations that these audits themselves are conducted corruptly or carelessly, rendering them mostly ineffective at combatting labor rights violations. There

203 Tomas Damerau, data from the Secretaría de Trabajo y Fomento al Empleo de la Ciudad de México.; Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

204 U.S. embassy official in discussion with the authors, January 2019.

205 A coordinator of research at ProDESC, in discussion with the authors, January 2019.

206 U.S. embassy official in discussion with the authors, January 2019.

207 Representative from approved social compliance firm, in discussion with the authors, January 2019.

208 Danil Cerdas, Victor Martinez, Ricardo Irra and Tomas Damerau, Ministry of Labor, in discussion with authors, 24 January 2019.

are several cases of factories passing audits even when state auditors noted several violations that should typically be disqualifying.<sup>209</sup> Additionally, facilities that have failed state audits have been reported to have resumed operations in a new location, under a new name, even though ownership remained the same, virtually guaranteeing that labor rights will continue to be violated in defiance of an audit finding.<sup>210</sup> A representative of the Maquila Solidarity Center stated that the organization had witnessed or known of audits that did not catch major violations and some of these audits later had to be redone.<sup>211</sup>

The complicated combination of factories passing audits despite disqualifying violations, the movement of factories in response to failed audits, and the redone audits indicate that there is no single observed—and effective—method of remediation for labor violations which draws the efficacy of the current state audit system further into question.

#### d. Lack of State Will

Beyond the challenges presented by corruption and lack of capacity, the Mexican state's enforcement ability is further constrained by the government's seeming lack of will to carry out any activities contrary to the interests of private sector corporations. According to trade theory, the shortage of labor in the northern state *maquiladoras*, in concert with the recently passed minimum wage legislation, should be generating upward pressure on wages in the country.<sup>212</sup> However, *maquiladoras* in the northern states have reportedly begun using migrant labor to keep wages low despite a reported labor shortage within the industry, as wages are

209 Representative from approved social compliance firm, in discussion with the authors, January 2019.

210 Coordinator of research at ProDESC, in discussion with the authors, January 2019.

211 Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.

212 Gladys Cisneros (Representative from Solidarity Center) in discussion with the authors, January 2019.; Steve Taylor, "Border maquilas are short 65,000 workers," *Rio Grande Guardian*, November, 2, 2018, <https://riograndeguardian.com/border-maquilas-are-short-65000-workers/>.



their primary cost driver.<sup>213</sup> However, the government has thus far failed to enforce the new wage legislation, ostensibly to enable Mexican industry to maintain its competitive advantage in labor costs. Additionally, the “corporatist” Mexican government has historically failed to prosecute companies that have acted illegally to oppress or assault labor activists and has, in fact, repressed labor activists through government action as well.<sup>214</sup> Finally, the ghost unions throughout the country require approval from a state government, indicating the government’s active support of companies against its legislation or, at the very least, an indifference to these violations.

## B. Private Sector Band-Aids

Given the weak landscape of state labor enforcement in Mexico, some private sector corporations have contracted private social compliance auditing firms in an attempt to monitor the performance of their suppliers within the country. These firms are pursued selectively by Mexican factories, which are mandated by their U.S. multinational buyers to pursue labor standards. Oftentimes, these standards are more progressive than those enshrined in Mexican law.<sup>215</sup> A U.S. embassy official acknowledged that these private social compliance firms have performed comparatively well in correctly enforcing labor protections.<sup>216</sup> One such firm conducted 2,400 audits in 2018, a massive accomplishment in comparison to the number of state audits conducted over the same period.<sup>217</sup> Further, these social compliance firms often employ a stricter interpretation of Mexico’s labor regulations than the state inspectorate due to higher standards demanded by some international buyers.<sup>218</sup> In some cases, these private audits have caught labor violations, particularly excessive

overtime hours in factories that had recently passed a state audit.<sup>219</sup>

However, the selective use of these social compliance firms means that these audits alone cannot offer a real solution to the broader enforcement gaps in Mexico. As these firms are contracted to audit Mexican factories that supply U.S. brands, they rarely, if ever, audit factories that solely supply the domestic Mexican market.<sup>220</sup> Unfortunately, this often means that domestic-supplying factories face much less accountability as they have not had the same experience with a customer base demanding their independent improvement on labor, health, and safety standards as have some international brands.<sup>221</sup> As a result of both this and the overall state of public auditing, labor violations are alleged to be much worse at these factories than at those supplying international brands by civil society organizations.<sup>222</sup>

Furthermore, the multinational brands that mandate the use of these social compliance firms often lack sufficient influence to demand behavior change in most individual suppliers. Factories often supply multiple brands, so their business does not usually depend too heavily on one specific brand, and the power of an individual brand is diluted. Additionally, factories often supply brands with differing labor standards so they arguably do not stand to lose too many brand customers by failing to meet some standards.<sup>223</sup> For example, a given factory may supply two multinationals. While one multinational may push the factory to adhere to high labor and health standards for its workers, the other multinational is relatively weaker in its standards. Therefore, the factory would not risk losing too much business by failing to meet the higher social compliance standards.

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213 Gladys Cisneros (Representative from Solidarity Center) in discussion with the authors, January 2019.

214 Gladys Cisneros (Representative from Solidarity Center) in discussion with the authors, January 2019.

215 Representative from approved social compliance firm, in discussion with the authors, January 2019.

216 U.S. embassy official in discussion with the authors, January 2019.

217 Representative from approved social compliance firm, in discussion with the authors, January 2019.

218 Representative from approved social compliance firm, in discussion with the authors, January 2019.

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219 Representative from approved social compliance firm, in discussion with the authors, January 2019.

220 Representative from approved social compliance firm, in discussion with the authors, January 2019.

221 Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.

222 A representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019; A coordinator of research at ProDESC, in discussion with the authors, January 2019.

223 A coordinator of research at ProDESC, in discussion with the authors, January 2019.







The deep-rooted cultural dynamics which dictate gender norms in Mexico contextualize the pervasive gender discrimination in the country.



## PART IV

# Barriers to Realizing the Rights of Working Women

As this report examines the intersection of international trade, human rights, and working women in Mexico, it is necessary to understand each of these contexts on an individual level before undertaking an analysis of their interaction. Considering that the previous sections addressed Mexico's economic and political history, the government's inability and unwillingness to implement legal protections for working women, and its legal landscape, the following section offers a nuanced look at the endemic gender discrimination which creates barriers for women throughout the country.



## A. Cultural Context

The deep-rooted cultural dynamics which dictate gender norms in Mexico contextualize the pervasive gender discrimination in the country. The widespread effects of *machismo* culture are entrenched throughout the everyday lives of men and women in Mexico, revealing themselves in the social, political, and economic aspects of the country. Only with a comprehensive understanding of the hypermasculine culture that pervades Mexican society can one begin to understand the issues facing women in the workforce.

It is difficult to settle on a concise, accurate definition of *machismo*, as it varies from country to country in Latin America. The word “*machismo*” is of Spanish origin and stems from the word *macho*. It can have a negative or positive connotation. In a general sense, it implies that men are the dominant figures in the family and calls to mind masculine, aggressive, and sexually

virile characteristics.<sup>224</sup> As a multifaceted social construct, *machismo* culture acts as a barrier to the progress of women in Mexico in every aspect of their lives. It is a major cause of the lack of female participation in the workforce. In traditional Mexican culture, men are expected to be the breadwinners and take charge of the family’s income, while women are relegated to taking care of the household. Patricia Hernandez, an expert in international law, writes, “interestingly, it is difficult to find a definition of *machismo* that does not aim to define males by their treatment of females. *Machismo* seems to entail what is socially and culturally to be male, but it also defines what it is to be female.”<sup>225</sup> Thus, the perpetuation of *machismo* culture is intertwined with the notion that women must be treated as

224 Eloisa G. Tamez, “Familism, Machismo and Child Rearing Practices among Mexican Americans,” *Journal of Psychosocial Nursing and Mental Health Services* 19, no. 9 (September 1981): 21–25.

225 Patricia M. Hernandez, “The Myth of Machismo: An



lesser.

One popular theory suggests that the root of *machismo* in Mexican culture can be traced back to the Spanish conquest – that the *machismo* attitude is a response to the subjugation of indigenous men by the Spanish.<sup>226</sup> During the Spanish Conquest, native men were subjected to sexual humiliation, often suffering from genital mutilation as a form of de-masculinization. The women were systematically raped and enslaved by the Spanish. Therefore, the degree to which sexuality was intertwined in the Spanish conquest can help explain the nature of *machismo*. It comes as a response to these degrading acts. “Pre-Conquest masculinities... were sublimated, repressed, and modified in the years following the arrival of the Spanish.”<sup>227</sup> Furthermore, as the ratio of women to men became relatively smaller with the arrival of the Spanish, it is believed that men had to display masculine traits to attract a suitable mate. Thus, *machismo* represents a lingering but ingrained societal belief that the bravest and most virile men make the best partners.<sup>228</sup> The pervasiveness of this ingrained cultural notion, and its role in explaining the pandemic gender bias in Mexico, are important to keep in mind as this report attempts to further explore gender discrimination in the country.

## B. Structural and Systemic Gender Discrimination

Structural and systemic gender discrimination is an endemic cultural issue in Mexico. However, this entrenched nature does not mean that Mexico is exempt from its responsibility to combat these problems. In a sense, the government replicates the issue by engaging in policies that lack a gender focus, resulting in women being made invisible by the discourse. In Mexico, this is a structural problem. The following section will provide an overview of the structural and systematic dynamics that affect the lives of women in Mexico,

including politics, security, education, employment, wages, and work-life balance.

### a. Politics and Women in Mexico

There is strong evidence indicating that the more women involved in politics, the better a government will be about ending gender discrimination practices and promoting equality.<sup>229</sup> Thus, it is crucial that women participate in the political process and serve as elected officials in Mexico if gender issues are to be properly addressed.

However, the *machismo* culture acts as a barrier to the engagement of women in politics. In recent years, Mexico has made active progress in diversifying its political representation to include women, as well as increasing their participation in public decision-making. Women who run for office in Mexico, continue to experience political harassment, violence, and negative attitudes.

According to the OECD, stereotypes and ingrained patriarchal notions drive these difficulties plaguing female political hopefuls and those in office, especially at state and municipal levels of the government. Female politicians often cite a lack of cooperation from male subordinates, who refuse to follow orders.<sup>230</sup> Furthermore, there are documented cases of female candidates being slandered or subjected to sexist comments. For example, in 2015, derogatory banners were displayed that implied a female gubernatorial candidate should be “pregnant and in a corner,” instead of in the governor’s mansion. In 2007, the municipal president of Oaxaca openly destroyed ballots that verified the victory of his successor, Eufrosina Cruz, stating that “women do

Everyday Reality for Latin American Women,” *St. Thomas Law Review* 15, no. 4 (2003): 859–82.

226 Michael Hardin, “Altering Masculinities: The Spanish Conquest and the Evolution of the Latin American Machismo,” *International Journal of Sexuality and Gender Studies* 7, no. 1 (January 2002): 1–22.

227 Michael Hardin, “Altering Masculinities,” 10.

228 Michael Hardin, “Altering Masculinities,” 18.

229 “Facts and Figures: Leadership and Political Participation,” UN Women, Accessed: January 2019, <http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures>.

230 Dalia Barrera-Bassols, “Acoso y Violencia Política: Testimonios de Sindicas y Regidoras Veracruzanas,” *Argicultura, Sociedad y Desarrollo* 1, no. 3 (2014): 249 – 270. <http://www.scielo.org.mx/pdf/asd/v11n3/v11n3a1.pdf>.



not exist here.”<sup>231</sup> Thus, there are deep-rooted gender stereotypes that must be addressed if more women are to run for office, especially considering how women’s political participation can be inhibited due to the high personal, professional, and emotional costs that arise from being politically active.

A survey conducted by INMUJERES, the National Institute for Women, found that among women in civil service, 77 percent believe that female civil servants experienced a *quid pro quo* scenario, in which women are approached with sexual offers in return for the promise of a better job.<sup>232</sup> To make matters worse, these women reported that their male counterparts often have impunity when it comes to this form of sexual harassment toward their female colleagues.<sup>233</sup> To combat this issue, Mexico has instituted new reforms aimed at protecting women including the Protocol on Political Violence Against Women (designed to protect women running and holding political office) and the Protocol for the Prevention, Treatment, and Punishment of Bullying and Sexual Harassment in federal public administration.<sup>234</sup> The former assists Mexico in complying with international obligations and offers guidance, while the latter implements institutional accountability mechanisms.<sup>235</sup>

## b. Gender Quota System

Arguably one of the most notable gender parity poli-

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231 Mona Lena Krook and Juliana Restrepo Sanín, “Género y Violencia Política En América Latina,” *Política y Gobierno* 23, no. 1 (2016): 125–57, [http://mlkrook.org/pdf/pyg\\_2016.pdf](http://mlkrook.org/pdf/pyg_2016.pdf).

232 *Encuesta de Clima y Cultura Organizacional*, INMUJERES, Mexico City, Mexico. 2015, accessed in OECD, *Building an Inclusive Mexico: Policies and Good Governance for Gender Equality* (Paris: OECD Publishing, 2017), 182, <https://dx.doi.org/10.1787/9789264265493-en>.

233 *Encuesta de Clima y Cultura Organizacional in Building an Inclusive Mexico* (OECD), 182.

234 Tribunal Electoral del Poder Judicial de la Federación (TEPJF), “Protocolo para Atender la Violencia Política Contra las Mujeres” [https://www.te.gob.mx/protocolo\\_mujeres/media/files/7db6bf44797e749.pdf](https://www.te.gob.mx/protocolo_mujeres/media/files/7db6bf44797e749.pdf); Instituto Nacional de las Mujeres (INMUJERES) “Protocolo de intervención para casos de hostigamiento y acoso sexual,” [https://www.inah.gob.mx/images/stories/Transparencia/2011/protocolo\\_vs\\_abuso\\_sexual.pdf](https://www.inah.gob.mx/images/stories/Transparencia/2011/protocolo_vs_abuso_sexual.pdf).

235 OECD, *Building an Inclusive Mexico*, 192.

cies in Mexico is a quota system that requires political parties to nominate an equal number of both men and women as candidates. OECD studies have found that gender diversity in public decision-making creates an environment for more inclusive policies and increases confidence in public institutions.<sup>236</sup> In 2014, Decree 135 of Article 41 of the Mexican Constitution raised gender parity to the constitutional level in the electoral arena for candidatures to the federal and local legislatures. Political parties are mandated to follow a 50 percent quota requirement for all candidates who stand for election.<sup>237</sup> The National Electoral Institute (INE) has agreed to monitor this requirement and to “ensure that women are not exclusively assigned to” losing districts.<sup>238</sup> This initiative can give way to more reforms aimed at fostering a more inclusive society, with a greater emphasis on gender equality. While acknowledging that this represents an important change to Mexico’s Constitution and political culture, the assumption that the INE can ensure every political party is compliant for every candidature throughout Mexico is problematic due to capacity issues previously discussed.

In 2018, the number of women in the lower House and Senate increased to 49 percent and 51 percent, respectively.<sup>239</sup> This success demonstrates the effectiveness of these types of reforms. However, there is disparity between government efforts and reality; political harassment and violence are still barriers to women entering public office, as many are deterred from seeking election for fear of gender-based violence.

Although gender parity has been achieved in the na-

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236 OECD, *Women, Government and Policy Making in OECD Countries: Fostering Diversity for Inclusive Growth* (Paris: OECD publishing, 2014), <http://dx.doi.org/10.1787/9789264210745-en>.

237 Amy Glover, “Mexico Seeks to Empower Women in Politics,” *Mexico Institute, Wilson Center*, July 10, 2014, <https://www.wilsoncenter.org/article/mexico-seeks-to-empower-women-politics>.

238 Glover, “Mexico Seeks to Empower Women in Politics.”

239 Magda Hinojosa and Jennifer Piscopo, “Women won big in Mexico’s elections—taking nearly half the legislature seats. Here’s why,” *Washington Post*, July 11, 2018, <https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/11/women-won-big-in-mexicos-elections-taking-nearly-half-the-legislatures-seats-heres-why/>.

tional legislature, many women in other political positions, still lack the same power and level of influence of their male counterparts.<sup>240</sup> Additionally, only 12 percent of all state municipalities have female mayors and only 20 percent of the judicial branch is composed of women. Moreover, there is little enforcement for non-compliance.<sup>241</sup> Overall, Mexico has made progress towards gender parity with their implementation of gender quotas in political parties. Even with its weak enforcement, gender quotas are enabling women to access the top echelons of power and increase gender-sensitivity in policymaking. Yet, there is still progress to be made.

Mexico should be applauded for its female representation in its legislature, ranking within the top five countries for female representation in politics.<sup>242</sup> However, high rates of female representation in the government is not necessarily the equivalent of gender equality. The policies that the government implemented have not yet trickled down into society, a trend that should alarm the Mexican government and populace. In terms of global gender equality indicators, Mexico still falls in the bottom half of 144 countries measured by the World Economic Forum (WEF).<sup>243</sup> Notably, Mexico's government has spent more money advertising its gender equality projects than on actual gender equality projects.<sup>244</sup>

### c. Structural Employment and Wage Issues

Despite the substantial improvement in gender equality in education in Mexico, the gender gap in labor mar-

ket participation is still large, thus presenting a major issue. Furthermore, when women do manage to gain employment, the wage gap is significant. It is important to recall that the Mexican Constitution stipulates that “equal wages shall be paid for equal work.”<sup>245</sup> Thus, a legal framework exists stipulating that women and men are to be paid equally; however, enforcement of this right is clearly an issue as a wage gap persists. According to data from the OECD, Mexican female workers are still paid much less than male workers relative to other OECD countries. According to this data, the average monthly gender pay gap is 16.7 percent for full-time employees.<sup>246</sup>

During interviews with academics and government agencies in Mexico City, *machismo* culture was cited as the root cause for the discrepancies between men and women in the work force. Dr. Eva Arceo Gomez, a professor of economics at *Centro de Investigación y Docencia Económicas* in Mexico City, studies the cross-section of gender, development, and labor economics. She noted that these gender norms are ingrained and are difficult to change. To do so, the government and non-governmental organizations (NGOs) must implement far-reaching programs, including mass media campaigns and other efforts aimed at engendering a cultural shift.<sup>247</sup> Experts at the *Comisión Nacional de los Derechos Humanos* (CNDH) emphasized that these gender norms are internalized and often promoted by women themselves, with many not understanding the sexism they face.<sup>248</sup> These internalized perceptions can make it even more difficult to combat the effects of *machismo* culture. Finally, experts at IN-MUJERES, noted that women are generally employed in service and commerce sectors where they face more

240 Sonia Corona, “Mexican women in politics: no glittering careers and no real power.” *El Pais*. 7 March 2018. [https://elpais.com/elpais/2018/03/07/inenglish/1520434930\\_190837.html](https://elpais.com/elpais/2018/03/07/inenglish/1520434930_190837.html).

241 Corona, “Mexican women in politics.”

242 Juliette Bonnafé (Program Specialist, UN Women Mexico) in discussion with the authors January 2019.

243 Shannon K. O’Neil, “Mexico’s Female Legislators are No Silver Bullet for Gender Inequality,” *Council on Foreign Relations*, September 4, 2018, <https://www.cfr.org/blog/mexicos-female-legislators-are-no-silver-bullet-gender-inequality>.

244 Daniela Barragán, “Peña gastó menos en la lucha por la igualdad de la mujer que en prensa,” *Vanguardia*. March 8, 2018, <https://vanguardia.com.mx/articulo/pena-gasto-menos-en-la-lucha-por-la-igualdad-de-la-mujer-que-en-prensa>

245 Mexican Constitution of 1917, art.123. (g).

246 OECD Employment Database 2016, accessed 10 May 2019, <https://www.oecd.org/employment/emp/employmentdatabase-earningsandwages.htm>.

247 Dr. Eva O. Arceo-Gomez (Professor, Centro de Investigación y Docencia Económicas A.C.) in discussion with the authors, January 2019

248 Representatives from CNDH (National Human Right Commission), in discussion with authors, January 2019.

salary discrimination.<sup>249</sup>

Furthermore, it is not uncommon for women to need permission from their husbands to work. Many men do not allow their wives to work, as there is a stigma around working women, particularly in rural areas. In 2013, researchers spoke with husbands and wives in Tehuacán, Mexico about their views regarding the participation of married women in the workforce. They derived three “moral” reasons internalized by the participants, which all act as barriers to women joining the workforce. These were: 1) the wives’ role as a homemaker and her reproductive responsibilities; 2) the husbands’ responsibility as the household’s main earner; and 3) the notion that women who work in *maquiladoras* may be unfaithful to their husbands. Some of the participants used the derogatory term *mandilon*, which essentially translates into ‘apron-wearer,’ to describe husbands who allow their wives to work or who take on domestic duties. In their eyes, these husbands are shirking their responsibilities to their wives and their families. This sentiment was echoed by some of the women interviewed in that study as well.<sup>250</sup>

This issue persists, though not to the same degree, for women in Mexican white-collar positions. In a report that focused on the career development of Mexican women, a female manager in Mexico said, “In a country in which machismo is important, if your husband doesn’t want you to have success, you won’t have it... or, you have to choose between professional success or your marriage.”<sup>251</sup> The report also notes that Mexican female managers often actively search for partners who pose less threat to their career prospects, in that they are less traditionally *machistas* or are from a non-Mexican background.

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249 Representatives from the National Institute for Women (INMUJERES), in discussion with the authors, January 2019.

250 Arlette Covarrubias, “Social Norms and Womens Participation in Salaried Employment: The Case of the Tehuacán Region of Mexico,” *Bulletin of Latin American Research* 32, no. 1 (2012): 17–31.

251 Pamela Lirio et. al, “Exploring Career-Life Success and Family Social Support of Successful Women in Canada, Argentina and Mexico,” *Career Development International* 12, no. 1 (2007): 28–50.

## C. The Second Shift

One of the most tangible consequences of economic liberalization in the lives of Mexican women was the spread of the *doble jornada*, known in English as the second shift or the double burden. This concept refers to individuals, usually, women, who have the responsibility of both, a paid job as well as a “second shift” at home—taking care of the children, cooking, and cleaning for example.<sup>252</sup>

This imbalance in unpaid labor not only represents a huge personal drain on women, but also a subsidy on the economy. If unpaid labor done by women and girls across the world were remunerated, it would amount to \$10 billion.<sup>253</sup> In this regard, the second shift has tangible consequences on the finances and productive capacities of countries. This illustrates that both human rights and economic arguments can be used to make a case for public policies that help women overcome this hurdle. The double burden is not only an issue of gender equality and of sharing a burden that is unfairly placed on women due to socially constructed gender norms, but also of ensuring that women have the time and preparation to participate in their economies at full capacity. It is important to recall that women have the right to “enjoy a real opportunity to exercise the right to work” under the Protocol of San Salvador.<sup>254</sup> As a signatory to this Protocol, Mexico has an obligation to ensure this right for women.

A state’s economic policies, both at a macro and micro level, have direct and distinct consequences on the lives of men and women. In most cases, economic policies further widen the divide that exists between gender due to preexisting sexist attitudes engrained in society, which unfairly overburden women. When public services or welfare policies are cut, for example, it is women who traditionally have to make up for these deficiencies by engaging in unpaid domestic work. This

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252 Arlie Hochschild and Anne Machung, *The Second Shift: Working Families and the Revolution at Home*, rev. ed. (New York: Penguin Books) 2012.

253 Max Lawson et. al, *Bienestar Público o Beneficio Privado*, Oxford: OXFAM, 2019, <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620599/bp-public-good-or-private-wealth-210119-es.pdf>.

254 OAS, “Protocol of San Salvador,” art.6.



phenomenon is certainly not limited to Mexico and can be seen replicated on a global level.<sup>255</sup>

Although the issue of the *doble jornada* occurs throughout the world, the problem is especially prevalent in Mexico. Mexican women spend an average of 373.3 minutes per day doing unpaid work, the highest of any OECD country and more than 2.8 times what men spend.<sup>256</sup> This section will attempt to understand the root of the *doble jornada* in Mexico and how it affects women, families, and the economy as a whole.

### a. A Brief History of the Second Shift in Mexico

Before trade liberalization, most women in Mexico did not work outside the house. This began to change as Mexico embraced an export-oriented model of industrialization. As mentioned previously, the expansion of the *maquiladora* sector in the 1960s and 1970s resulted in a large demand for labor and, thus, allowed women to join the workforce in large numbers for the first time. As a result, nearly 80 percent of *maquiladora* workers were women.<sup>257</sup> These expanded employment opportunities resulted in a larger degree of economic freedom that had previously been unattainable for women. Because of trends in industrialized societies, researchers believed that women would have more access to resources, and thus more household power.<sup>258</sup> However, the increased employment of women did not lead to their complete autonomy.<sup>259</sup> Elizabeth Fussell refers to this change as a double-edged sword—although

new jobs brought some economic autonomy, they did not fully offer the opportunity for professional or economic advancement.<sup>260</sup>

The subsequent expansion of the *maquiladora* sector in the 1980s again changed the labor composition, this time shifting away from educated, single women to married women.<sup>261</sup> These women—typically working mothers—became the “ideal labor force” due to their vulnerable socioeconomic position.<sup>262</sup> Their condition as working mothers or heads of households meant that they depended on that income for the survival of their families, making them less likely to risk losing their jobs.<sup>263</sup>

Mexico’s economic liberalization paired with austerity measures in the 1990s (meant to address the Mexican Peso Crisis), further deteriorated female labor conditions.<sup>264</sup> Women from low-income households were forced to take precarious jobs in order to be able to financially contribute to their household while simultaneously continuing to shoulder the brunt of domestic labor.<sup>265</sup>

This restructuring of women’s employment created a new vulnerability for women, one which was not accompanied by a restructuring of societal protections. In Mexico, these new vulnerabilities are exemplified by the fact that women joining the formal workforce did not alter gender norms or expectations, beginning the problem of the *doble jornada*. Women in Mexico must now shoulder two burdens: domestic and professional work.

255 Lawson, et al., *Bienestar Público o Beneficio Privado*, 39.

256 OECD, *Building an Inclusive Mexico*, 151.

257 Elizabeth Fussell, “Making Labor Flexible: The Recomposition of Tijuana’s Maquiladora Female Labor Force,” *Feminist Economics* 6, no. 3 (2000): 62, <http://dx.doi.org/10.1080/135457000750020137>.

258 Leslie C. Gates, “The Strategic Uses of Gender in Household Negotiations: Women Workers on Mexico’s Northern Border,” *Bulletin of Latin American Research* 21, no. 4 (2002): 507–26.

259 Patricia María Fernández-Kelly, *For We Are Sold, I and My People: Women and Industry in Mexico’s Frontier*. Albany: State University of New York Press, 1983.

260 Fussell, “Making Labor Flexible: The Recomposition of Tijuana’s Maquiladora Female Labor Force.”

261 Fussell, “Making Labor Flexible: The Recomposition of Tijuana’s Maquiladora Female Labor Force.”

262 Fussell, “Making Labor Flexible: The Recomposition of Tijuana’s Maquiladora Female Labor Force.”

263 Fussell, “Making Labor Flexible: The Recomposition of Tijuana’s Maquiladora Female Labor Force.”

264 Lawson, et al., *Bienestar Público o Beneficio Privado*, 39.

265 Lawson, et al., *Bienestar Público o Beneficio Privado*, 39.

## b. Invisible Labor

Gender-based discrimination at home is most apparent when reviewing hours spent on unpaid housework. More than 90 percent of all Mexican women perform unremunerated domestic work.<sup>266</sup> Many arguments stemming from the embedded societal gender norms are espoused to explain this phenomenon. Some believe that because of these ingrained stereotypes, women underestimate the importance of domestic work and internalize it as their duty; others argue that these gender norms allow men and women to discount the importance of domestic work and that many perceive the income from work outside the home as more valuable.<sup>267</sup>

Two factors come into play in determining the severity of the *doble jornada*—societal norms that see domestic work as female labor and the lack of institutional resources available for working women (e.g., affordable child care, elderly care facilities, and access to social security).<sup>268</sup> Overall, neither the government nor the private sector promotes policies that accurately reflect the work-life balance realities of working women in Mexico.<sup>269</sup> As mentioned previously, the pervasiveness of *machismo* culture means that gender norms are ingrained in all levels of Mexican society, to the extent that the notion of “being a woman” is deeply entwined to the practice of the *doble jornada*.

In Mexico, the overwhelming majority of responsibilities in the home fall onto the woman. For example, women spend 36.5 hours per week dedicated to domestic activities, whereas men spend 12.2 hours.<sup>270</sup> Similarly, women complete 75.2 percent of the unpaid

care and domestic work in the home.<sup>271</sup> Thus, Mexican women, whether they are mothers or not, bear a disproportionate responsibility for unpaid domestic labor.<sup>272</sup> The second shift means that working women in Mexico often work long hours, and then come home to their “invisible jobs”—cooking, cleaning, and taking care of the house.<sup>273</sup> This gender disparity in unpaid work at home translates to inequality in paid work as well.<sup>274</sup> If women were able to divert this unpaid household and child care time into remunerated work, they could significantly increase their income. What is clear is that this extra burden of the double shift is rooted in gender norms. While many women may want to work outside of the home, they are expected to conform and complete domestic work.

Additionally, rural women spend even more hours on unpaid work than women who live in urban areas, reflecting inadequate access to social services.<sup>275</sup> Unpaid labor for rural women goes beyond taking care of the children, as they often take some part in the agriculture process—cooking meals for the men, helping with the harvest, or plowing the fields—without being paid to do so.<sup>276</sup> The most common household work arrangement for Mexican couples with children is the male partner working paid hours full-time while the female partner works “zero paid hours per week.”<sup>277</sup>

The gap between gender in terms of workforce participation becomes even more pronounced when women become mothers with the addition of the “motherhood penalty.”<sup>278</sup> The motherhood penalty is a phenomenon whereby perceptions affect how mothers are treated

266 Juliette Bonnafé (Program Specialist, UN Women Mexico) in discussion with the authors January 2019.

267 Gates, “The Strategic Uses of Gender in Household Negotiations,” 508.

268 Representatives from the Mexican Human Rights Commission, in discussion with the authors, January 2019.

269 Representatives from the Mexican Human Rights Commission, in discussion with the authors, January 2019.

270 Sistema de Indicadores de Género, “Encuesta Nacional Sobre el Uso de Tiempo 2014,” INEGI-INMUJERES, [http://estadistica.inmujeres.gob.mx/formas/panorama\\_general.php?menu1=9&IDTema=9&pag=1](http://estadistica.inmujeres.gob.mx/formas/panorama_general.php?menu1=9&IDTema=9&pag=1).

271 Instituto Nacional de Estadística y Geografía (INEGI), “Cuenta Satélite del Trabajo No Remunerado de los Hogares en México, 2017” News Release, December 11, 2018, <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2018/StmaCn-taNal/CSTNRH2017.pdf>.

272 OECD, *Building an Inclusive Mexico*, 99.

273 Julia Quiñonez (Coordinator, Comité Fronterizo de Oberr@s, CFO), in discussion with the authors, January 2019.

274 OECD, *Building an Inclusive Mexico*, 34.

275 OECD, *Building an Inclusive Mexico*, 155.

276 Professor Maria Gisela Espinosa, in conversations with the authors, January 2019.

277 OECD, *Building an Inclusive Mexico*, 35.

278 OECD, *Building an Inclusive Mexico*, 99.

in the workplace. These generalized perceptions that mothers have lower competence and commitment, for example, result in being held to higher punctuality standards, in a decreased likelihood being hired or promoted, as well as in lower wages.<sup>279</sup> Thus, the burden of the *doble jornada* is compounded by that fact that mothers tend to receive lower wages than women who do not have children, and lower wages than men, whether they have children or not.<sup>280</sup> Although the motherhood penalty is a worldwide phenomenon, Mexican mothers are much less likely to engage in paid work than mothers in other OECD countries.<sup>281</sup>

### c. Effects on the Lives of Women

The *doble jornada* dynamic engenders a lack of work-life balance that negatively affects women's possibility for upward social and economic mobility, a right stipulated in Article 7 of the ICESCR, and one that Mexico is bound to protect and promote. These women who devote significantly more time to unpaid work are more likely to reduce their paid work or drop out of the workforce entirely. Furthermore, it takes a toll on the physical and psychological quality of the lives of women.<sup>282</sup> There are certain challenges that contribute to the self-perpetuating nature of the *doble jornada*—women either do not have access to professional care for their children or do not trust it; caring for the elderly becomes an issue as the population ages; women often do not have the education or skills needed to access jobs in the labor market (sometimes because of their added responsibilities in the home); and, often, women are not allowed to work by their families or husbands.<sup>283</sup>

Thus, one of the largest issues that women in Mexico face today is that the *doble jornada* poses a barrier to gender equality—both socially and economically.<sup>284</sup> First, the dynamic reinforces the stereotypical image of the woman in the home. It is a self-perpetuating situation, where both men and women see domestic labor as a female field.<sup>285</sup> Second, it reinforces the image of the woman as the subservient gender.<sup>286</sup>

The fact that the burden of unpaid domestic work falls on women means that more women than men work in the informal sector, which provides more flexibility but also higher economic risk and no social welfare protections or benefits.<sup>287</sup> Additionally, the physical and psychological toll of the *doble jornada* severely diminishes the productivity of women. Not only do they have less time to dedicate to paid labor, but they have less energy for it as well.

Low salaries and harsh working conditions mean that women often have to resort to different avenues to make ends meet. Often the salaries of the *maquiladoras*, for example, are not enough to buy a household's basic basket of goods, which forces women to find side jobs so that they can meet their domestic costs.<sup>288</sup> Women who work in northern border towns often cross the border to buy cheap goods and then resell the items in Mexico, others may sell their blood or plasma in U.S. centers that target Mexicans across the border.<sup>289</sup>

Additionally, the physical and psychological toll of the second shift severely diminishes both the productivity and the quality of life of women. Not only do they have less time to dedicate to paid labor, but they have less energy for it as well. Women who are overburdened

279 Shelley Correll, Stephan Bernard, and In Palik, "Getting a Job: Is there a Motherhood Penalty?" *American Journal of Sociology* 112, no.5, (March 2007): 1297-1339, <https://doi.org/10.1086/511799>.

280 OECD, *Building an Inclusive Mexico*, 99.

281 OECD, *Building an Inclusive Mexico*, 24.

282 Dr. Maria Gisela Espinosa Damián (Professor, Universidad Autonoma Metropolitana) in discussion with the authors, January 2019.

283 Dr. Eva Arceo Gomez (Professor, Centro de Investigación y Docencia Económicas A.C.), in discussion with the authors, January 2019.

284 Representatives from the National Institute for Women (INMUJERES), in discussion with the authors, January 2019.

285 Representatives from CNDH (National Human Rights Commission), in discussion with the authors, January 2019.

286 Representatives from the Mexican Human Rights Commission, in discussion with the authors, January 2019.

287 OECD, *Building an Inclusive Mexico*, 34.

288 Julia Quiñonez (Coordinator, Comité Fronterizo de Obrer@s, CFO), in discussion with the authors, January 2019.

289 Julia Quiñonez (Coordinator, Comité Fronterizo de Obrer@s, CFO), in discussion with the authors, January 2019.



by the *doble jornada* do not have much time for rest, leisure, or personal care, a trend that OECD refers to as “time poverty.”<sup>290</sup> Although time poverty affects both men and women, in Mexico, 28.5 percent of women with children experience time poverty, versus 21.5 percent of men.<sup>291</sup>

The takeaway of the *doble jornada* is that it severely cuts into women’s time, productivity, and quality of life. Moreover, it limits the time that women have to engage in educational and vocational training, meaning that they are often stuck in lower-level jobs without hope of improvement. The combination of these factors directly limits the possibility for women to compete in the job market on a level playing field, and thus limits female upward economic mobility.

#### d. The Second Shift and GDP

The economic effects of women’s invisible labor and the *doble jornada* goes beyond the personal. With women spending so much time on unpaid labor, there is less time to dedicate to paid work thus reducing both their and their country’s productivity.

To put it into perspective, the value of unpaid domestic work represents 23.3 percent of Mexico’s total GDP.<sup>292</sup> If this type of labor were paid and quantified, it would account for the largest portion of economic activity in the country.<sup>293</sup> This demonstrates that unpaid labor is not only a drag on women’s economic opportunities, but also the country’s productivity and competitiveness. The pervasiveness of unpaid domestic and care work means that Mexico is losing a significant portion of productive capacity and that women are unequally bearing this burden.

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290 OECD, *How’s Life? 2013: Measuring Well-being* (Paris: OECD Publishing, 2013), 4, <https://doi-org.proxy1.library.jhu.edu/10.1787/9789264201392-en>.

291 OECD (2013), *How’s Life? 2013*, 4.

292 Instituto Nacional de Estadística y Geografía (INEGI), “Cuenta Satélite del Trabajo No Remunerado de los Hogares en México, 2017” News Release, December 11, 2018,

293 INEGI, “Cuenta Satélite del Trabajo No Remunerado de los Hogares en México, 2017.”

## D. Gender-based Discrimination and Violence in the Home

While Mexico has been making concerted efforts to reduce gender discrimination, there is still much progress to be made. The following section will outline structural gender discrimination, gender-based violence (both at home and in the workplace), and issues around upward mobility.

### a. Household Income

Gender-based discrimination and violence at home comes in many forms. As with many countries, two incomes are needed for stability in Mexican households, and so women’s labor force participation has become essential to a household’s economic viability. The rising number of single-mother households in Mexico has created an additional burden for many female laborers, and this change in family structure is affecting women’s abilities to work and undertake specific jobs. Indeed, the OECD found that female-headed households in Mexico are more likely to experience financial precarity and are at a greater risk for poverty, as the woman is often the sole source of the family’s income.<sup>294</sup> Twenty-nine percent of households were headed by women in 2014, with the majority of these women being single mothers.<sup>295</sup> Any disruption of income streams for these women can send the household into dangerous cycles of poverty and instability.

In households where there is both male and female labor participation and dual incomes are earned, a woman’s participation in the labor force can affect household resource distribution. When women are in control of a larger share of household resources, it has been consistently proven that they are more likely to invest resources into their children.<sup>296</sup> The earned income of women is often considered secondary to their husbands’ money. In one study, working Mexican women

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294 OECD, *Building an Inclusive Mexico*, 27.

295 Instituto Nacional de Estadística y Geografía (INEGI). “Estadísticas a Propósito del Día Internacional de la Eliminación de la Violencia Contra la Mujer” *Government of Mexico*. México. 2015. <http://www.inegi.org.mx/saladeprensa/aproposito/2015/violencia0.pdf>.

296 OECD, *Building an Inclusive Mexico*, 116.

noted that their incomes were used to buy supplemental, non-necessary items, while their husbands' money went toward food, housing, and electricity.<sup>297</sup>

The Mexican government has begun to understand this phenomenon, and developed cash transfer programs to promote woman-led households. Today, Mexico is a leader in its policy of cash transfer programs targeted at combating poverty. One of the most prominent programs is *Prospera* (formerly *Progresá*), which, although not exclusively targeted at women, overwhelmingly provides conditional cash transfers to mothers of low-income families.<sup>298</sup>

## b. Gender-Based Violence (GBV)

Gender-based violence against women—including femicide, assault, kidnapping, and sexual violence—is a major issue found commonly throughout Mexico. According to UN Women, nine women are murdered in Mexico every day, and seven out of ten women have suffered from some form of violence.<sup>299</sup> Often, the principal aggressors are the spouses or partners of these women.<sup>300</sup> Moreover, the majority of these cases go unreported.<sup>301</sup> While there are many legal protections for women, such as the General Law on Women's Access to a Life Free of Violence, they are not consistently applied. Additionally, there is a general mistrust and lack of faith in the Mexican judicial system.<sup>302</sup>

297 Irene Casique, "Mexican Married Women's Autonomy and Power Within the Household," Centro Regional de Investigaciones Multidisciplinarias (CRIM), <http://lasa.international.pitt.edu/Lasa2000/Casique.PDF#page=20>.

298 OECD, "Building an Inclusive Mexico", 117.

299 Juliette Bonnafé (Program Specialist, UN Women Mexico) in discussion with the authors January 2019.

300 Representatives from CNDH (National Human Rights Commission), in discussion with the authors, January 2019.

301 INMUJERES. "Relación de las Instancias de las Mujeres en las Entidades Federativas con los ejecutivos estatales." Mexico. October 2014, accessed in *Building an Inclusive Mexico* (OECD), 75.

302 David Shirk, "Justice Reform in Mexico: Changes and Challenges in the Judicial Sector," in *Shared Responsibility: U.S.-Mexico Policy Options for Confronting Organized Crime*, ed. Eric L. Olson, David A. Shirk, and Andrew Selee (San Diego: Woodrow Wilson International Center for Scholars and Trans-Border Institute, University of San Diego, 2010), 205-246.

To respond to the gender-based violence in Mexico, the government developed a Gender Violence Alert System. Under the system, states declare alert status and implement programs to combat violence against women. Programs include increasing policing efforts, creating special gender-focused police branches, responding to complaints, enacting education programs, and developing street light projects.<sup>303</sup> The alert system was created to bring to light the pressing problem of femicide and to visualize the violence that exists throughout the country.<sup>304</sup> Currently, 18 of 32 federal entities in Mexico are under alert.<sup>305</sup>

While this shows a valiant effort on behalf of Mexico, sometimes these well-intended programs further gender stereotypes. For example, the gender units of some police branches have pink uniforms.<sup>306</sup> This form of stereotyping perpetuates ingrained gender norms. Additionally, some of the policemen tasked with the protection of women engage in gender-based violence in their personal lives.<sup>307</sup> Other times local governments enact change, but they lack a gender perspective, so it ultimately fails to achieve the intended impact. While states have been attempting to address the gender-based violence, the ones mentioned above fail to address roots of the issue adequately. Evidence suggests that gender-based violence "not only negatively affects women's participation in economic and public life, but also imposes an economic price and productivity loss."<sup>308</sup> Many of these gender-based violence issues are a result of societal gender stereotypes and attitudes at home, school, and work.

303 Representatives from CNDH (National Human Rights Commission), in discussion with the authors, January 2019.

304 Representatives from CNDH (National Human Rights Commission), in discussion with the authors, January 2019.

305 Representatives from CNDH (National Human Rights Commission), in discussion with the authors, January 2019.

306 Representatives from CNDH (National Human Rights Commission), in discussion with the authors, January 2019.

307 Representatives from CNDH (National Human Rights Commission), in discussion with the authors, January 2019.

308 OECD, *Building an Inclusive Mexico*, 32.

This general state of violence that exists in some parts of Mexico has further negative impacts on women because it makes it far more difficult for them to demand their rights. Although there are domestic legal protections for women, they are not applied consistently.<sup>309</sup>

### c. Intimate Partner Violence (IPV)

Women earning income in a dual-income household can also face other forms of gender discrimination, such as intimate partner violence (IPV). In Mexico, one study found that in general, due to the *machismo* culture, men often believe they have to be the breadwinners in the family, as that is the trademark of masculinity.<sup>310</sup> If this role is not fulfilled, they feel threatened, as it brings into question their “masculinity” and their culturally-prescribed dominant position in the household.<sup>311</sup> Oftentimes, if a woman is paid more than her male partner, the income grants her economic freedom. However, a study found that sometimes, because of this economic freedom, men fear that women might “rebel” against cultural norms. Thus, these men feel the need to exert control over their female partners in the form of IPV.<sup>312</sup> Therefore, earning extra income can sometimes prove dangerous for women due, in large part, to cultural considerations.

Another study found that economically empowering women can significantly decrease the incidence of IPV, but only if wages were still lower than her partner’s wages. This is because the extra income reduced stress on the previously limited household income.<sup>313</sup> The

same study determined that once the woman’s income equaled or exceeded that of her male partner’s, it increased her bargaining power and thus was perceived as a threat by her partner. Once this occurred, the male partner was more likely to turn to the use of IPV to reassert dominance.<sup>314</sup> While dual incomes can have some positive effects, it also can bring about more gender violence and discrimination in the household.

This is particularly related to the issue of free trade and women’s rights considering the increase of female labor participation engendered Mexico’s economic liberalization. This follows the theme of a double-edged sword—with more and more women joining the labor force and gaining access to economic resources, there may be a rise of tensions inside the home that leaves them vulnerable to domestic violence or IPV.

### d. Long Commutes

Not only do women workers encounter sexual harassment in the workplace, but they also face this form of violence during their long commutes to and from work. Over 48 percent of female public transit users in Mexico City have reported instances of sexually harassment in transit, with 60 percent of those including physical approaches.<sup>315</sup> Further, over 70 percent of women who used public transit said they felt insecure while using the service.<sup>316</sup> To combat these issues, some metros include “women-only” cars, but these cars are often overfilled.

To ensure their safety, some women resort to traveling with other colleagues to and from work or pay for drivers to transport them to their workplaces.<sup>317</sup> When asked why they continue to work under such undesirable conditions, they often say it is due to financial strain. If

309 Representatives from the National Human Rights Commission (CNDH), in discussion with the authors, January 2019.

310 Ignacio Maldonado, Maribel Nájera, and Adriána Segovia, “Efectos del programa oportunidades en las relaciones de pareja y familiares,” in *El Programa Oportunidades examinado desde el género* ed. Maria de La Paz Lopez and Vania Salles (Mexico City: Colegio de Mexico, 2006), 99. <https://ogp.colmex.mx/libreria/OportunidadesOGP.pdf>.

311 I. Maldonado, M. Nájera, and A. Segovia, “Efectos del programa oportunidades en las relaciones de pareja y familiares.”

312 I. Maldonado, M. Nájera, and A. Segovia, “Efectos del programa oportunidades en las relaciones de pareja y familiares.”

313 Aixa Garcia-Ramos, “Women’s relative wage and

intimate partner violence in Mexico: A non-monotonic relationship,” December 9, 2016, [https://editorialexpress.com/cgi-bin/conference/download.cgi?db\\_name=SAEe2016&paper\\_id=112,4](https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=SAEe2016&paper_id=112,4).

314 Garcia-Ramos, 4.

315 Instituto Nacional de Estadística y Geografía (INEGI), *Mujeres y Hombres en México 2015*, Aguascalientes, Mexico, 2015.

316 INEGI, “Mujeres y Hombres en México 2015”.

317 A coordinator of research at ProDESC, in discussion with the authors, January 2019.



public transit was considered “safer” from gender discrimination, it is likely that more women would look for employment opportunities, or look for employment options farther from their home which may offer better benefits and pay.

Furthermore, due to inadequate urban development planning and poor public transportation services, Mexican workers must endure some of the longest commutes to work when compared to other OECD countries.<sup>318</sup> Long commutes make for long days, contribute negatively to the work-life balance, and reduce overall quality of life, especially for women. These poor transportation options also limit women workers’ ability to participate in the labor market and increase their exposure to GBV. Thus, this acts as a compounding factor that increases the likelihood of women being exposed to violence during their commutes.

## E. Gender-Based Discrimination – Lack of Upward Mobility

There is no doubt that the lack of upward mobility plagues women in Mexico. One study by UNDP revealed that only 5 percent of companies have female board members.<sup>319</sup> While these statistics may be shocking, there are a few primary reasons for this lack of upward mobility which include: lack of training programs or access to them, a culture of long work hours, high teenage pregnancy rates, limited access to quality child and elderly care, deficient maternity and paternity leave policies, and differences regarding access to loans and retirement options.

### a. Long Work Hours

Mexico’s work culture is characterized by long hours and often lacks the option for telework or part-time

work.<sup>320</sup> In the *maquiladora* sector, the work week is long, with employees often working 48 hours a week.<sup>321</sup> Mexicans are overworked and have one of the longest average work weeks when compared to all OECD countries.<sup>322</sup> As previously discussed, long hours place an unfair burden on women workers, as they are often also expected to perform unpaid housework after returning from work in the *maquiladoras*. The result is essentially a double workday for women.

For women in senior positions, the situation is worse. These women encounter even longer work days of more than 10 hours, as time spent in the office is valued more than efficiency.<sup>323</sup> If women are expected to work 10+ hours per day to maintain senior positions, their time with their families is limited, thus hindering their ability to maintain a work-life balance. Women often feel guilty or dissatisfied if they are unable to spend enough time with their children, often due to societal pressures.<sup>324</sup> Men, on the other hand, can afford to work long hours because they are not bound by the same cultural expectations.

The burden is amplified if the mother is the single head of the home and has limited access to quality child care, as she must choose between her personal and work life. Women who plan to have a family can be impeded by this cultural mentality of long work days, and often must consider if they can remain in the workforce or aim for senior positions as they reconcile work and personal life demands.

### b. Adolescent Pregnancy

Another aspect inhibiting women’s upward mobility in Mexico is the high indices of teenage pregnancy. Currently, Mexico has the highest adolescent pregnancy

320 OECD, *Building an Inclusive Mexico*, 37.

321 U.S. embassy official in discussion with the authors, January 2019.

322 OECD, *Building an Inclusive Mexico*, 141.

323 UNDP, *Gender Equality and Women’s Empowerment in Public Administration: Mexico Case Study*, 23.

324 UNDP, *Gender Equality and Women’s Empowerment in Public Administration: Mexico Case Study*, 24.

318 OECD, *Building an Inclusive Mexico*, 141.

319 United Nations Development Programme, *Gender Equality and Women’s Empowerment in Public Administration: Mexico Case Study*, (Washington DC UNDP, 2012), accessed on [https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/public\\_administration/gepa2.html](https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/public_administration/gepa2.html).

rate out of all OECD countries.<sup>325</sup> Often, these young mothers are forced to drop out of school and work to care for their children. Later in life, even if these women enter the labor market, they are often trapped in low-paid and low-skilled jobs. As a result, they are disadvantaged economically (low wages) and they are limited in their upward mobility as they lack schooling and experience to move into better paid or more skilled positions.

When it comes to youth between the ages of 15 to 29, there is a high rate of young women who are neither employed, educated nor in training (NEETs). Currently, Mexico has the second highest rate of female NEETs in all OECD countries, with 35 percent of young women being NEETs, compared to an OECD average of 14 percent.<sup>326</sup> Meanwhile, only 10 percent of young men in Mexico are NEETs. Of the female NEETs, approximately two-thirds are mothers and they spend a significant amount of time providing unpaid household work.<sup>327</sup> Since these young women are removed from the labor market early on, they encounter many barriers when entering the workforce later in life. Studies show that the first ten years in the labor market are crucial for an individual's career. Therefore, these women are disadvantaged as they often are unable to participate in the labor market during these critical years.<sup>328</sup> The fact that many women classified as NEETs are also mothers is especially concerning given Mexico's high rate of teen pregnancy, as it indicates more women in Mexico will be relegated to low-skilled jobs.

### c. Lack of Adequate Child Care

The lack of quality and affordable child care constrains women from both participating more in paid work and moving up in their careers. As part of Encouraging Quality in Early Childhood Education and Care (ECEC), under Mexican law, women workers in the formal sector are entitled to institutional child care for children aged 43 days until 4 years of age.<sup>329</sup> This daycare is offered by the Mexican Institute for So-

cial Security (IMSS) to working parents provided that they are enrolled in the social security system. These daycares can be contracted out to private providers or directly provided by the IMSS. This is still a barrier to many working mothers if they were not enrolled in social security by their employers. Subsidized child-care for children of low-income working mothers and single fathers is also provided by the Secretariat of Social Development (SEDESOL).<sup>330</sup> However, daycare administered by the IMSS is considered higher quality due to the IMSS' regulations. Neither, however, offers quality care—or any care—to children with disabilities.

Mexico has made efforts to increase the availability of child care for women working in low-income jobs with the *Programa de Estancias Infantiles para Apoyar a Madres Trabajadoras*. Despite this effort, child care capacity and quality are insufficient to meet demand.<sup>331</sup> While child care may be accessible, there are low educational requirements for child care providers, high child-to-teacher ratios, and a lack of resources.<sup>332</sup> Since low-income households can only afford to place their children in these poor child care facilities, there is public concern over social and cognitive development of these young children given that it is during a critical time of development, and that disadvantages at a young age ultimately limit future upward mobility.

Additionally, only 30 percent of women in the *maquiladora* sector have access to child care at their workplace.<sup>333</sup> Even if child care is offered, many are hesitant to use these programs as there have been many issues around the quality of care and the insufficient capacity to meet demand.<sup>334</sup> Therefore, these workers are wary about relying on this form of care. Without access to quality child care, women are more likely to leave the labor force after giving birth. Providing public working benefits regardless of gender is imperative to women's economic empowerment in Mexico.

325 OECD, *Building an Inclusive Mexico*, 3.

326 OECD, *Building an Inclusive Mexico*, 24.

327 OECD, *Building an Inclusive Mexico*, 32.

328 OECD, *Building an Inclusive Mexico*, 24.

329 OECD, *Building an Inclusive Mexico*, 109.

330 OECD, *Building an Inclusive Mexico*, 109.

331 OECD, *Building an Inclusive Mexico*, 34.

332 OECD, *Building an Inclusive Mexico*, 116.

333 Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.

334 OECD, *Building an Inclusive Mexico*, 111.

Despite government progress in expanding mandatory early childhood education, certain factors including limited capacity, lack of geographic coverage, and affordability still hinder greater maternal participation in the labor force. Lack of child care may ultimately force women to pursue illicit jobs. For example, women are attracted to positions selling drugs with cartels because it is a convenient way to make an income while still being able to take care of their children.<sup>335</sup> Notably, female participation in drug cartels has increased in the last several years.<sup>336</sup> From the perspective of cartels, women are desirable as low-level foot soldiers because they are less likely to arouse the suspicion of police.<sup>337</sup> While a job in a *maquiladora* would mean prescribed work hours that might take a woman away from her children during the day, selling drugs allows that same woman the flexibility to choose when she works, and even allows her to keep her children with her as she sells drugs.

However, these low-level foot soldiers are more often arrested and imprisoned than higher-ranking cartel members in Mexico's war on drug trafficking. As a result, the number of women in Mexico's prisons increased by 103.3 percent between 2014 and 2016.<sup>338</sup> This puts these women at risk for abuse in Mexican prisons; international NGOs, including Amnesty International and Human Rights Watch, have documented cases of Mexican police raping and beating women to extract confessions from them.<sup>339</sup> Until a law change in 2017, children under the age of six could live with their mothers in prison; at the present time, children under the age of three can live with their jailed moth-

ers, while children older than three are sent to live with other family members, or are put in the care of social services or shelters.<sup>340</sup>

#### d. Maternity Leave

Another area inhibiting women's upward mobility is Mexico's laws on maternity and paternity leave. Mexico has the second shortest leave entitlement for mothers in all OECD countries (just after the U.S.). An important caveat is that only women workers in the formal sector are entitled to the 12 weeks of maternity leave as stipulated in the Constitution, which is approximately one-third of the population. Six weeks of paid maternity leave also applies to women who have recently adopted a child.

Additionally, eligibility for *Instituto de Seguridad Social* (government) maternity leave is contingent on women having met the minimum contribution period, which is at least 30 weeks of work during the 12 months preceding the date when payment is due to begin. If this condition is not met, the employer is responsible for covering 100 percent of the cost. Unfortunately, this means that employers are more likely to engage in discriminatory hiring practices toward women of childbearing age, as they do not want to risk incurring these costs.<sup>341</sup>

Mexico's setup for maternity and paternity leave encourages gender discrimination. The fact that paid paternity leave is relatively shorter than maternity leave discourages men from taking an active role in the early stages of child-rearing. Instead, this places the initial parenting burden on women, thus reinforcing stereotypical gender norms. Extending the length of paternal leave in Mexico would help alleviate the traditional role of women as caregivers, leading to an increase in women's working hours and labor force participation.<sup>342</sup> Overall, this relative imbalance in the duration

335 Jasmine Garsd, "Women filling Mexico's prisons are the 'lowest rung of the drug trade,'" *Public Radio International*, April 3, 2018, <https://www.pri.org/stories/2018-04-03/women-filling-mexicos-prisons-are-lowest-rungs-drug-trade>.

336 Chris Mendoza (Coordinator of the Program on Gender and Economic, Cultural, and Social Rights, Simone de Beauvoir), in discussion with the authors, January 2019.

337 Garsd, "Women filling Mexico's prisons are the 'lowest rung of the drug trade'".

338 Garsd, "Women filling Mexico's prisons are the 'lowest rung of the drug trade'".

339 Garsd, "Women filling Mexico's prisons are the 'lowest rung of the drug trade'".

340 Jasmine Garsd, "As more women are being incarcerated in Mexico, so are their babies," *Public Radio International*, April 5, 2018. <https://www.pri.org/stories/2018-04-05/more-women-are-incarcerated-mexico-so-are-their-babies>.

341 OECD, *Building an Inclusive Mexico*, 150.

342 Akgunduz, Yusuf, and Janneke Plantenga, "Labour Market



of maternity and paternity leave creates disparities in the hiring process, as employers are much less inclined to hire and invest in women employees. If both men and women were entitled to the same amount of leave for the birth of a child, it may decrease employer discrimination against hiring women of childbearing-age, as men would represent an equal risk or potential cost in the event of a pregnancy.

### e. Barriers to Education and Training

Education is a key factor for training workers in the formal labor force, improving productivity, fostering inclusive economic growth, and promoting upward mobility. The education levels of the population are increasing in Mexico, and gender disparity in the Mexican education system has decreased substantially in the last few years. According to education and gender data from UNESCO, primary educational attainment (or higher) of women ages 25 or older increased from 62.24 percent of the total female population in 2000 to 79.16 percent in 2016.<sup>343</sup> In 2000, the gender gap was about 5 percent. In 2016, it decreased to approximately two percent.<sup>344</sup> Thus, the decrease in the gender gap demonstrates that more women are being educated and prepared to continue their studies and join the labor force.

Upper secondary educational attainment also improved for women ages 25 and older relative to men

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Effects of Parental Leave. A European Perspective”, *Utrecht School of Economics, Tjalling C. Koopmans Research Institute*, Discussion Paper Series, April 2011; OECD, *Closing the Gender Gap: Act Now*: OECD Publishing, 2012, <https://www.oecd.org/gender/closingthegap.htm>; Helene Dearing, “Does parental leave influence the gender division of labour? Recent empirical findings from Europe”, *Vienna University of Economics and Business, Institute for Social Policy*, Working Paper No. 1/2015, March 2015.

343 The United Nations Educational, Scientific and Cultural Organization (UNESCO). “Education attainment: at least completed primary (ISCED 1 or higher), population 25+ years, female (%)”, 2000-2016”, accessed on May 2, 2019. <http://data.uis.unesco.org/>

344 UNESCO, “Education attainment: at least completed upper secondary (ISCED 3 or higher), population 25+ years, male (%)”, 2000-2016”, accessed on May 2, 2019, <http://data.uis.unesco.org/>; UNESCO, “Education attainment: at least completed primary (ISCED 1 or higher), population 25+ years, female (%)”, 2000-2016.”

of the same ages. Between 2000 and 2016, statistics for women who at least completed upper secondary education increased from 15.17 percent to 32.3 percent.<sup>345</sup> Gender disparity for upper secondary education decreased from 7 percent to approximately 2 percent during the same period.<sup>346</sup> Tertiary educational attainment has also reached gender parity in Mexico.<sup>347</sup>

Despite this educational progress in Mexico, women still face ingrained structural barriers. Women in Mexico are still facing obstacles to enter certain fields, such as science, technology, education, and math (STEM). Additionally, upper-secondary dropout rates in Mexico are the highest out of OECD countries.<sup>348</sup> The most common reasons for dropping out of school are lack of financial resources to cover tuition, lack of interest, or pregnancy.<sup>349</sup>

Moreover, wage discrimination still persists for highly educated women. Women with tertiary degrees are paid only 66 percent of what their male colleagues earn, a statistic that is eight percent lower than the OECD average.<sup>350</sup> To make matter worse, the Mexican higher education system favors higher-income students, because the government greatly subsidizes public universities and a large proportion of students attending public universities come from the richest families.<sup>351</sup>

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345 UNESCO, “Education attainment: at least completed upper secondary (ISCED 3 or higher), population 25+ years, female (%)”, 2000-2016.”

346 UNESCO, “Education attainment: at least completed upper secondary (ISCED 3 or higher), population 25+ years, female (%)”, 2000-2016”; UNESCO, “Education attainment: at least completed upper secondary (ISCED 3 or higher), population 25+ years, male (%)”, 2000-2016”.

347 OECD, *Country Note: Education at a Glance 2018*, Paris: OECD Publishing, 2018.

348 OECD, *Building an Inclusive Mexico*, 57.

349 Subsecretariat of Higher Education, *Reporte de la Encuesta Nacional de Desercion en la Educacion Media Superior*, Secretary of Public Education, 2011, 50, [http://www.sems.gob.mx/work/models/sems/Resource/10787/1/images/Anexo\\_6Reporte\\_de\\_la\\_ENDEMS.pdf](http://www.sems.gob.mx/work/models/sems/Resource/10787/1/images/Anexo_6Reporte_de_la_ENDEMS.pdf).

350 OECD, *Education at a Glance*.

351 The World Bank, OECD, Building an Inclusive Mexico, 109. “Chapter 7: Education,” in *Mexico Public Expenditure Review*, Washington D.C., World Bank Group, 2016. <http://documents.worldbank.org/curated/en/284151472615491033/Mexico-Public-expenditure-review>

## f. Retirement

An additional barrier to upward mobility is the difference in retirement options. As demonstrated before, women on average spend more time than men performing domestic work; therefore, it ultimately affects their ability to earn a pension as domestic work does not pay for retirement. Since women have less time to work in the formal sector, they often have limited options for retirement and pension. One study found that of women in the formal labor sector, the retirement rate was 11.5 percent, compared to over 27 percent for their male counterparts.<sup>352</sup> Furthermore, as women workers more frequently participate in the informal labor sector, 67 percent in Mexico are not affiliated with any guaranteed pension system.<sup>353</sup> The combination of informal work and a heavy domestic burden, work against women workers when it comes to retirement options and pensions as it pushes them outside of the formal labor market that generally offers these options.

## g. Access to Financing and Loans

Another barrier to female upward mobility is women's lack of access to loans and other financial resources. This obstacle is caused by a lack of property to use as collateral, lack of access to education, lack of technological access (e-commerce), and lack of time.<sup>354</sup> This combination of factors contributes to the difficulty women face when trying to file paperwork to access loans and other resources. Often without these loans and resources, women are limited in the jobs and type of activities they can perform in the labor market. Women lack the money to invest and therefore do not have the support to create their businesses and elevate their quality of life.<sup>355</sup> It is not surprising then that only 2.5 percent of businesses are owned by women.<sup>356</sup> Without

access to proper financing and loans these women are greatly restricted in the types of jobs and activities they can provide to the labor market, contributing to their structural disadvantage.

As demonstrated above, women workers are plagued by difficulties when it comes to upward mobility. This mobility matters not just for individuals and families, but also for the broader economy. Countries with lower levels of social mobility are more likely to misallocate human skills and talents as it reduces innovation, motivations, and productivity, all of which impact the bottom line of economic growth. In Mexico, the combination of lack of training programs or access to them, culture of long work hours, high teenage pregnancy rates, limited access to quality child and elderly care, policy on maternity/paternity leave, and differences regarding access to loans and retirement options, all contribute to the restrictions placed on female upward mobility. If not addressed, Mexico will lose out on the potential that these women workers have to offer to the economy.

352 Representatives from the National Institute for Women (INMUJERES), in discussion with the authors, January 2019.

353 OECD, *Building an Inclusive Mexico*, 140.

354 Representatives from the National Human Rights Commission (CNDH), in discussion with the authors, January 2019.

355 Representatives from the National Human Rights Commission (CNDH), in discussion with the authors, January 2019.

356 Representatives from the National Institute for Women (INMUJERES), in discussion with the authors, January 2019.





Gender-based discrimination in the workplace is unfortunately all too common, and the maquiladoras prove to be no exception. Gender-based discrimination is found in wages, occupational segregation, and discrimination practices in recruitment, training, and promotion.



# PART V

## *Maquiladora Case Study*





## A. Gender Discrimination

As discussed, women in Mexico face many barriers in education, financial services, and in the workplace. Although the Mexican state has many laws enshrined in the Constitution, the Federal Labor Law, the General Laws on equality and violence against women, and through international obligations on women's rights, women have not yet achieved gender equality in Mexico. Through international trade, Mexico has experienced economic growth and increased participation of women in the labor market. While these may be positive developments, Mexico lags behind other Latin American countries with similar levels of development in many respects, thereby underutilizing Mexican women's economic potential.

When compared to other countries in the region, the OECD found that Mexico has one of the lowest rates of female participation in the formal labor market and is thus not reaping the full benefits of their productive

capacity.<sup>357</sup> The study showed that only 47 percent of working-age women in Mexico are part of the formal labor force, compared to 82 percent of males.<sup>358</sup> The OECD average for female participation is 67 percent, and is about 60 percent in other regional countries such as Peru, Colombia, Brazil, and Chile.<sup>359</sup> That being said, it is important to note that there are substantive differences in these statistics throughout Mexico due to discrepancies in regional labor opportunities. The highest rate of female labor participation in Mexico is found in Colima, with 55.5 percent, while Chiapas has the lowest, with only 26.3 percent female participation.<sup>360</sup>

Beyond the obvious societal impacts of the gender gap in labor participation, the economic impact is substantive as well. If the labor participation gender gap were

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357 OECD, *Building an Inclusive Mexico*, 3.

358 OECD, *Building an Inclusive Mexico*, 3.

359 OECD, *Building an Inclusive Mexico*, 3.

360 Encuesta Nacional de Ocupación y Empleo. Segundo tri-

reduced by half, it would increase per capita GDP by 2.46 percent each year through 2040.<sup>361</sup> Lack of female participation in the labor force slows down the entire economy. If Mexico does not reduce the gender gap, the country will continue to lose out on valuable resources, talent, and the economic potential of women. Because the losses are substantial when a woman leaves or is unable to enter the workforce, Mexico should use gender equality as a catalyst for development.

### a. Informal Labor

Due to the focus of this report, the legal inclusion of informal workers and benefits will not be discussed at length. However, it is important to understand this dimension, as it contributes to the disenfranchisement of women in Mexico.

While women and men encounter high informal labor participation, the gender gap is substantial. According to the OECD, 57.2 percent of the informal non-agricultural jobs are held by women.<sup>362</sup> This means that almost two-thirds of Mexican women are caught in the informal sector and face economic disadvantages. These high rates of informality correspond with low earnings, poor quality jobs, and increased income insecurity.

Employment in the informal sector is a major barrier for women's access to public benefits, especially social security and associated benefits like health insurance. The gender gap on social protection is significant, with 48.5 percent of males working in the informal sector reporting having never received any social protections (social security, pensions, etc.) compared to 64.6 percent of women working in the informal sector.<sup>363</sup> This puts women at a steeper disadvantage and increases their risk of living in poverty.

### b. Formal Labor

In contrast to the informal sector, some women report they feel more disadvantaged in certain formal sector jobs, such as the *maquiladoras*. The salaries in the *maquiladoras* are very low, and as a result, women are forced to find other jobs (primarily in the informal sector), in order to contribute to household costs.<sup>364</sup> It is important to note that while *maquiladoras* are technically considered formal labor, they often operate similarly to informal sector work. Women workers in the *maquiladoras* generally work 48 hours a week, from Monday to Saturday, to make minimum wage.<sup>365</sup> Mexico did institute a new and significantly higher minimum wage in January 2019, but it still does not constitute a “living wage.” That is, a wage which allows for access to basic necessities, including food and shelter.

The *Comisión Nacional de los Salarios Mínimos* (CONASAM) instituted a new minimum wage in Mexico based on two geographical zones. The first is the Northern Border “Free Zone” geographical area, integrated mainly by the municipalities that have a border with the U.S., which includes 43 municipalities in six states. These areas are home to many of Mexico's *maquiladoras* (reference Figure 1). The new minimum wage in this zone is \$176.72 Mexican pesos a day, for each work day/shift, which is the equivalent of approximately \$8.80 USD/day.<sup>366</sup>

The second zone includes all other municipalities in Mexico, which now have a minimum wage of \$102.68 Mexican pesos a day or about \$5.10 USD/day.<sup>367</sup> The new minimum wages are positive steps for Mexico, but are far from a fair or “living” wage.<sup>368</sup> As mentioned

mestre, 2018, referenced in discussion with representatives from the National Institute for Women (INMUJERES), January 2019.

361 OECD, *Building an Inclusive Mexico*, 24.

362 OECD, *Building an Inclusive Mexico*, 37.

363 OECD, *Building an Inclusive Mexico*, 67.

364 Julia Quiñonez (Coordinator, Comité Fronterizo de Obreros, CFO), in discussion with the authors, January 2019.

365 U.S. embassy official in discussion with the authors, January 2019.

366 “Border zone minimum wage hike affects 43 municipalities,” *Mexico News Daily*, December 19, 2018, <https://mexiconewsdaily.com/news/border-zone-minimum-wage-hike-affects-43-municipalities/>.

367 “Border zone minimum wage hike affects 43 municipalities,” *Mexico News Daily*.

368 Representative from approved social compliance firm, in



above, the Mexican Constitution requires that worker receive a minimum wage, that “must be sufficient to satisfy the normal material, social, and cultural needs of the head of a family and to provide for the compulsory education of [their] children.”<sup>369</sup> With the opening of trade, part of Mexico has become “Americanized” in terms of its prices—especially Mexico City. If workers are only making minimum wage in the *maquiladoras*, they cannot support themselves.<sup>370</sup> Unfortunately, there has been little discussion in Mexico, especially in the *maquiladora* sector, around the topic of a fair or “living” wage. Factory managers are not taking steps to address this, nor are they concerned with instituting a living wage for their workers.<sup>371</sup> Wages are a primary cost, and as the *maquiladora* sector is a highly competitive industry, much more focus is on reducing this cost and paying only the minimum wage (or slightly above).<sup>372</sup>

There are other barriers which prevent workers in the *maquiladora* sector from accessing social security benefits. Failing to register employees in social security, although unconstitutional, is a common practice among businesses including *maquiladoras*.<sup>373</sup> This failure may be intentional on the part of businesses to avoid paying social security contributions or fines associated with failing to register employees. To make matters worse, approximately 35 percent of these women’s salary goes towards government benefits (like social security deductions from paychecks), which can be grossly mismanaged.<sup>374</sup> While women workers in the *maquiladoras* technically receive health insurance, they commonly find it inadequate. For example, if they go to the hospital, they often do not receive the proper care. Thus, they are not reaping the benefits of their contri-

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discussion with the authors, January 2019.

369 Mexican Constitution of 1917, art.123. (f).

370 Representative from approved social compliance firm, in discussion with the authors, January 2019.

371 Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.

372 Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.

373 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

374 U.S. embassy official in discussion with the authors, January 2019.

butions to social security.<sup>375</sup>

Another main issue is that the *maquiladora* sector does not pay enough in wages or benefits to make women stay at the factories. Therefore, for these women, informal employment is seen as the better economic option, as it can offer higher pay, greater flexibility, and less violence compared to the *maquiladoras*.<sup>376</sup> In particular, women working in flea markets in border towns found that it was more profitable working in the informal sector, even if that meant forgoing benefits. According to one statistic, women in border cities working in the *maquiladoras* would be making \$10 USD/day, whereas in the informal sector, women could make \$30 USD/day.<sup>377</sup> Therefore, for many of these women, it is more appealing to take up informal sector work. However, whether these women work in the formal *maquiladora* sector or the informal sector, both are ultimately economically disadvantaged, as they lack or do not receive an adequate level of social protections.

### c. Education and Income Distribution

Educational attainment is crucial for reducing the harmful effects that trade may have had on women. Through increased education levels, women will gain the skills required to be professionally competitive and transition into growing and dynamic industries.<sup>378</sup> However, as mentioned in Part IV, women have high educational attainment, but are not seeing the benefits of these achievements in the labor force. The *maquiladoras* present an even more dire situation; it seems as though education is not the answer to job promotion, as the average return to schooling is lower than that estimated for other formal sectors.<sup>379</sup> For example, De Hoyos found that the level of formal education increased overall between 1994 and 2000; yet, the av-

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375 U.S. embassy official in discussion with the authors, January 2019.

376 Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.

377 U.S. embassy official in discussion with the authors, January 2019.

378 Ernesto Aguayo-Tellez, “The Impact of Trade Liberalization Policies and FDI on Gender Inequalities: A Literature Review,” 2012, *World Bank*, <https://openknowledge.worldbank.org/handle/10986/9220?locale-attribute=en>

379 De Hoyos, “Chapter 3 Female Labor Participation and Occupation Decisions in Post-NAFTA Mexico.”

erage education level of female workers in the manufacturing sectoring decreased between 1994 and 1996 and remained below the 1994 level for the same period of 1994 to 2000.<sup>380</sup> This is consistent with findings that trade agreements produced a net loss of about 50,000 jobs for women with higher education and a net creation of about 850,000 jobs for intermediate studies/basic capacity.<sup>381</sup> Indeed, in an interview held with a former employee of a *maquiladora*, she emphasized that work in the *maquiladora* perpetuates this unbreakable cycle of stagnant professional growth, causing negative spillover effects for the children's educational attainment and professional prospects.<sup>382</sup>

The employment status of a mother not only affects the economic situation of the mother herself but is also a determinant factor in child poverty.<sup>383</sup> Once again, Mexico has one of the highest child poverty rates of the OECD countries, which points to the negative correlation between child poverty and maternal employment.<sup>384</sup> The poor pay and the long hours in the *maquiladoras* cause a shortage of time and resources for women to dedicate to their children's education, resulting in their children having a lack of preparation, and growing up to work in low-skilled jobs in the *maquiladoras*.<sup>385</sup> Thus, these conditions ultimately replicate a cycle of dependence on the *maquiladora* sector and of perpetual poverty.

It becomes clear that addressing the issues present in

380 De Hoyos, "Chapter 3 Female Labor Participation and Occupation Decisions in Post-NAFTA Mexico."

381 Alejandra Eguíluz Zamora, Maria Ines Vásquez, and Alma Espino, "Trade and Gender: Advances in the Process of Gender Mainstreaming in Trade Operations," Inter-American Development Bank, September 2012, <https://publications.iadb.org/en/publication/11839/trade-and-gender-advances-process-gender-mainstreaming-trade-operations>.

382 Julia Quiñonez (Coordinator, Comité Fronterizo de Obre-r@s, CFO), in discussion with the authors, January 2019.

383 OECD, *Building an Inclusive Mexico*, 116, 117.

384 OECD, *Building an Inclusive Mexico*, 116, 117.

385 Julia Quiñonez (Coordinator, Comité Fronterizo de Obre-r@s, CFO), in discussion with the authors, January 2019.

these factories will have far-reaching effects for the Mexican population. While Mexico has made strides in improving its education system, there is still more to be done. With more investments in education, especially for women, the gender gap in education will tend to decrease in the next few years, allowing more women to qualify for tertiary education.<sup>386</sup>

## B. Gender-Based Discrimination and Violence at Work

Gender-based discrimination in the workplace is unfortunately all too common, and the *maquiladoras* prove to be no exception. Gender-based discrimination is found in wages, occupational segregation, and discrimination practices in recruitment, training, and promotion. Gender discrimination can even be found in a job posting that requests a specific gender, a practice outlawed in many countries. Many of these gender-based discriminations in the workplace are exacerbated by harassment on the worksite itself or in transit to work.

### a. Harassment in the Workplace

As mentioned in Part I, Mexico has domestic and international obligations to prevent gender-based discrimination in the workplace. The General Law on Women's Access to a Life Free of Violence, specifically addresses sexual harassment in the workplace. However, in practice, this is still prevalent. From 2015 to 2016, Mexico registered 223 gender-based discrimination violations of which 58.8 percent of them were violations against women.<sup>387</sup> Over 10 percent of women reported that they had fewer job opportunities than their male counterparts, 9 percent reported receiving a lower salary for the same position held by males, and 5.3 percent were forced to take a pregnancy test as a requirement for obtaining their position (even though prohibited

386 OECD, *Building an Inclusive Mexico*, 71.

387 Instituto Nacional de Estadística y Geografía (INEGI), "Estadísticas a propósito del día internacional de los derechos humanos (10 de diciembre)," December 7, 2017, 12, [http://www.beta.inegi.org.mx/contenidos/saladeprensa/aproposito/2017/derechos2017\\_Nal.pdf](http://www.beta.inegi.org.mx/contenidos/saladeprensa/aproposito/2017/derechos2017_Nal.pdf)

per law).<sup>388</sup>

Women working in the *maquiladoras* face many forms of violence including both sexual and psychological, as well as discrimination and harassment. Although men also work in the *maquiladoras*, this type of violence is directed towards women.<sup>389</sup> Specifically, systemic sexual harassment is used as a method of control, and all too often supervisors expect sexual favors from women.<sup>390</sup> If a supervisor or someone in a position of power harasses a female worker, and the woman worker refuses, there often will be retaliation for rejection.<sup>391</sup> Supervisors will give them harder jobs or will assign them additional overtime (unwanted) as retribution for their rejection.

Mechanisms to efficiently detect and punish indirect gender discrimination in the workplace are rare. Suing an employer for gender discrimination in Mexico is still a bureaucratic and complicated process, and discrimination is rarely punished.<sup>392</sup> Information on employment discrimination is also difficult to find in Mexico. As mentioned above, CEDAW protects women against indirect gender discrimination and Mexico prohibits prejudice at the workplace. However, in practice, without the existence of a monitoring and enforcement mechanism to protect women, discriminatory practices will persist.

Implementing mechanisms is an important step because many of these prejudicial practices can be contextual and depend on the hiring procedures of a firm.

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388 Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares referenced in discussion with Representatives from CNDH (National Human Rights Commission), January 2019.

389 Julia Quiñonesz (Coordinator, Comité Fronterizo de Obrer@s Maquiladoras, CFO Maquiladoras), in discussion with the authors, January 2019.

390 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

391 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

392 Área de Derechos Sexuales y Reproductivos, Programa de Derecho a la Salud, División de Estudios Jurídicos del Centro de Investigación y Docencia Económicas, “Shadow Report on employment discrimination against women in Mexico,” June 2018, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT\\_CEDAW\\_NGO\\_MEX\\_31406\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MEX/INT_CEDAW_NGO_MEX_31406_E.pdf).

For instance, a firm may only hire men, claiming that a certain type of work requires physical strength. However, these requirements can be a way of impeding women from entering certain positions. The United States provides a good example of what could be done to improve indirect gender discrimination in Mexico. In the U.S., employers in the private and public sector are required to conduct a survey for the Equal Employment Opportunity Commission (EEOC) that includes disaggregated data by gender and sex regarding their employees. Such a mechanism currently does not exist in Mexico. Hence, Mexico can use experiences from the U.S. to improve indirect gender discrimination in the workplace.<sup>393</sup>

## b. Positions of Leadership

Once women arrive to work, they face even more gender-based discrimination when it comes to leadership roles. There are fewer women in leadership positions than men in the manufacturing sector. Despite the increase in female educational attainment and the decrease in the education gender gap in Mexico, women in the *maquiladoras* still face gender-based discrimination when wanting to move to leadership positions.

One of the reasons is the lack of training opportunities for women to take on these roles. According to a Coordinator of Research at ProDESC, many women are not taken seriously in this sector. Furthermore, if they do manage to overcome barriers and earn a leadership position, many question their qualification for the role or the reasoning behind their promotion. Others also engage in derogatory action against these female leaders, and in some cases, accuse them of conducting sexual behavior with peer managers.<sup>394</sup> The main goal of this type of discrimination is to hurt a woman’s reputation. Thus, it becomes increasingly harder for women to sustain their leadership position after they are discriminated.

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393 Área de Derechos Sexuales y Reproductivos, “Shadow Report on employment discrimination against women in Mexico”.

394 A coordinator of research at ProDESC, in discussion with the authors, January 2019.



### c. Pregnancy

Over the past decade, Mexico has made great progress in reducing forced pregnancy tests. However, despite this progress and although it has been an illegal practice under Mexican labor law since 2012, some employers still require women to take these tests before employing them. While this has reduced forced pregnancy tests, discrimination of women of child-bearing-age still occurs. According to a Coordinator of Research at ProDESC, maternity leave is not enforced properly. Furthermore, when women workers become pregnant, they are often not paid overtime if their work then takes longer. Rather, they must take their work home or stay longer without pay to catch up.<sup>395</sup> This happens because they are afraid of losing their jobs.

Despite legal provisions that guarantee paid maternity leave, employers often utilize different tactics to avoid providing that benefit. For example, pregnant women working in *maquiladoras* are reportedly given harder work or isolated from their coworkers to force them to quit before taking maternity leave.<sup>396</sup> Others report being forced to work with harmful chemicals while pregnant, which greatly increases the risk of a miscarriage.<sup>397</sup>

Despite being illegal under Mexican law, some women report losing their jobs once they leave to have their children.<sup>398</sup> As mentioned in Part I, the Federal Labor Law guarantees five days of paid paternity leave, significantly lower than what is guaranteed to women. Thus, this discrepancy between maternity and paternity leave places the majority of the burden of child care on the woman and promotes gender stereotypes, creating further distortions that negatively impact female labor participation.

395 Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.

396 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

397 A coordinator of research at ProDESC, in discussion with the authors, January 2019.

398 Representative from Maquila Solidarity Network (MSN), in discussion with the authors, January 2019.

### d. Health and Safety

There is also differential treatment for women in terms of health and safety. In the *maquiladoras*, it's endemic that employers choose not to register their employees in the Mexican Social Security system to avoid paying taxes, which is unconstitutional.<sup>399</sup> Therefore, when a worker needs these services, they are unable to obtain them.

Additionally, if they need medical attention, employers often deny the day off.<sup>400</sup> In other situations where a woman is injured in the workplace and goes to the doctor, the employer often refuses to pay for it and claims the injury occurred at home.<sup>401</sup> As women in Mexican society perform the most unpaid domestic work, employers will use it to their advantage to avoid paying for workplaces injuries. All of the gender-based discrimination occurring at home and in the workplace ultimately affects a women worker's potential for upward mobility.

399 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

400 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.

401 Dr. Kimberly A. Nolan Garcia (Professor, Facultad Americana de Ciencias Sociales, FLACSO) in discussion with the authors, February 2019.





In recent years both public and private, as well as other CSOs have been making efforts to combat gender-based discrimination and include a gender lens in mainstream issues, but true change requires not only gender specific public policies, but also effective implementation to fundamentally reshape gender stereotypes and attitudes at school, work, and home.



# PART VI

## Efforts to Combat Gender-Based Discrimination

In recent years both public and private, as well as other CSOs have been making efforts to combat gender-based discrimination and include a gender lens in many mainstream issues. While there has been progress, the road ahead is long. True change requires not only gender specific public policies, but also effective implementation. To fully combat gender-based discrimination, Mexico needs to fundamentally reshape gender stereotypes and attitudes at school, work, and home. This change will only be brought about by active participation from public, private, and other CSO actors. The following are some of the key initiatives being undertaken by public, private and other non-state actors.





## A. Government Initiatives

### a. Gender Mainstreaming Initiatives

The Mexican government has taken several steps to incorporate a gender perspective into its policies. There is no doubt that laws which protect the status of women are plentiful in Mexico. In this regard, the country has often been a pioneer. As previously mentioned, the *machismo* culture, the lack of capacity, and the lack of a gender perspective in politics have served as a counterbalance for the existing protections as women continue to face discrimination and violence.

That being said, the government has been receptive to its faults, and has openly declared the need for gender mainstreaming across the board. An example of this new trend can be found in the 2013-2018 National Development Plan (NDP), which, for the first time ever, included the need for a gender perspective as one of the country's five “cross-cutting” goals.<sup>402</sup> The objective

402 Government of the Republic of Mexico, *Plan Nacional de Desarrollo 2013-2018*, May 20, 2013, [http://www.cofemer.gob.](http://www.cofemer.gob.mx/documentos/marcojuridico/rev2016/PND%202013-2018.pdf)

being, “to foment a process of deep change that would begin within the existing government institutions,” in order to stop the federal government from promoting gender stereotypes that lead to “inequality, exclusion, and discrimination.”<sup>403</sup> In this vein, the government of Enrique Peña Nieto increased the portion of the federal budget dedicated to promoting gender equality by 157 percent in 2015.<sup>404</sup>

### b. Scholarships for Women in STEM

One of the primary initiatives to increase women's upward mobility and, ultimately, overall economic growth is through funding scholarships and other educational programs, especially for STEM. One publicly funded program is Capacita-T which specifically

[mx/documentos/marcojuridico/rev2016/PND%202013-2018.pdf](http://www.cofemer.gob.mx/documentos/marcojuridico/rev2016/PND%202013-2018.pdf)

403 Government of the Republic of Mexico, *Plan Nacional de Desarrollo 2013-2018*, 11.

404 “Mexico, Country Page,” UN Women, Americas and the Caribbean, accessed May 10, 2019, <http://lac.unwomen.org/en/donde-estamos/mexico>.



targets NEETs and provides youths with training and resources to encourage them to enter the labor force.<sup>405</sup> Of Capacita-T's participants, 60 percent are women.<sup>406</sup>

In another example, the OECD has partnered with the Mexican Ministry of Education to create the program Niñas STEM PUEDEN. This program is a joint initiative between the Mexican Ministry of Education and the OECD to increase the number of women entrepreneurs and to help girls pursue careers in STEM—fields in which women are poorly represented.<sup>407</sup> This initiative represents a move toward improving gender equality in Mexico.

### c. Reduction in Adolescent Pregnancy

For the Mexican government, another major goal is to reduce adolescent pregnancy. Mexico continues to make great strides when it comes to reducing teenage pregnancy, but there is still room for improvement. Throughout the past decade the *Seguro Popular*, Mexico's public health insurance, has increased the quantity and availability of contraceptives. However, the use of contraceptive measures remains low, with only 51.6 percent of females using contraception, compared to the Latin American and Caribbean average of 67 percent.<sup>408</sup> The government has also aimed to improve sexual education throughout the country.<sup>409</sup>

### d. Educational Reform

As part of the education reform, through the *Programa Sectorial de Educacion 2013-2018*, Mexico has worked to reduce gender stereotyping in school textbooks.<sup>410</sup> Through this program, textbooks were being

updated to eliminate sexist images and content, and include gender equality in the curriculum, covering material on anti-discrimination.<sup>411</sup> This is an effort to address the systemic nature of gender stereotyping and to avoid ingrained cultural norms that stem from *machismo* culture. While this is a good first step in tackling the pervasive nature of *machismo* culture, there still remains work to be done in terms of standardizing gender-sensitivity education across the country.

### e. Cash Transfer Programs

The Mexican government has focused on empowering women through its conditional cash transfer system. It is generally known that when women control more of the household income, children are better off. With this in mind, Mexico implemented a conditional cash transfer program called "*Prospera*," which is overwhelmingly given to women. It has been relatively successful in providing mothers more control over resources entering the household and improving their bargaining position.<sup>412</sup> Its focus is on improving access to food, education, and healthcare in an effort to combat intergenerational poverty in Mexico.<sup>413</sup>

OECD studies have shown that there is a negative correlation between child poverty and female labor force participation.<sup>414</sup> Thus, as Mexico increases the number of mothers working in its economy, child poverty levels should decline. However, the setup of "*Prospera*" has resulted in an additional unpaid work burden for these women and served to perpetuate the traditional gender role of women as the primary caregiver. To receive the conditional cash transfer offered by *Prospera*, mothers are responsible for confirming their children's preventative health visits and school attendance.<sup>415</sup>

405 OECD, *Building an Inclusive Mexico*, 98.

406 OECD, *Building an Inclusive Mexico*, 98.

407 "Ninas STEM PUEDEN," Secretary of Education and OECD, accessed on May 10, 2019, <http://ninastem.aprende.sep.gob.mx/en/demo/home>

408 Instituto Nacional de Estadística y Geografía (INEGI), "Encuesta Nacional de la Dinámica Demográfica, Tabulados básicos," Government of Mexico, Mexico City. 2014.

409 OECD, *Building and Inclusive Mexico*, 7.

410 Government of the Republic of Mexico, *Programa Sectorial de Educacion 2013-2018*, December 2013: 59, <https://www.sep.gob.mx/work/models/sep1/Resource/4479/4/images/PRO->

[GRAMA\\_SECTORIAL\\_DE\\_EDUCACION\\_2013\\_2018\\_WEB.pdf](#).

411 OECD, *Building an Inclusive Mexico*, 97.

412 OECD, *Building an Inclusive Mexico*, 42.

413 Laura G. Dávila Lárraga, *How Does Prospera Work? Best Practices in the Implementation of Cash Transfer Programs in Latin America and the Caribbean*, Washington DC: Inter-American Development Bank, 2016. <https://publications.iadb.org/en/publication/17104/how-does-prospera-work-best-practices-implementation-conditional-cash-transfer>.

414 OECD, *Building an Inclusive Mexico*, 28.

415 OECD, *Building an Inclusive Mexico*: 42.

## f. Gender Certification Programs

Although there are substantial implementation issues between government policy and its application, INMUJERES has created a certification for organizations across every sector related to labor equality and discrimination. According to the text of these standards, they were created to support the state in its compliance under many international declarations and protocols, in which the government commits its support to gender equality and non-discrimination. The standards of labor equality and non-discrimination, legally known as NMX-R-025-SCFI-2015, are voluntary certifications, which over 2,000 organizations have obtained.<sup>416</sup> Some of the requirements include having a committee on the subject matter, internal audits, work environment assessments, equal opportunities for promotion, training on labor equality, and work-life balance.<sup>417</sup> Organizations receive points for their level of adherence to certain standards, such as supporting “co-responsibility in the professional, family, and personal life with equal treatment and opportunities,” offering child care, or granting flexibility in the workers work schedule.<sup>418</sup> There are different levels of the certifications, allowing for organizations to improve as they better their practices. These certifications are only valid for four years. Furthermore, the implementation of these standards has positive spillover effects on society, such as increasing the visibility of gender equality and reducing discrimination in the workplace.<sup>419</sup>

Although this is a grand achievement that appears to be successful, even INMUJERES cannot fully implement this program, according to CEDAW’s 2018 recommendations. Though the government is supporting and setting standards for businesses, organizations, and government agencies, it must also remember to adhere to those same standards, as well as to promote them

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416 INMUJERES, “Norma Mexicana en Igualdad Laboral y no Discriminación,” YouTube, December 25, 2015, [https://www.youtube.com/watch?time\\_continue=321&v=6AL9Gge\\_D7Q](https://www.youtube.com/watch?time_continue=321&v=6AL9Gge_D7Q).

417 Secretary of the Economy, *Norma Mexicana: En Igualdad Laboral y no Discriminación*, 2015, [https://www.gob.mx/cms/uploads/attachment/file/25111/NMX-R-025-SCFI-2015\\_2015\\_DGN.pdf](https://www.gob.mx/cms/uploads/attachment/file/25111/NMX-R-025-SCFI-2015_2015_DGN.pdf).

418 Secretary of the Economy, *Norma Mexicana: En Igualdad Laboral y no Discriminación*.

419 Secretary of the Economy, *Norma Mexicana: En Igualdad Laboral y no Discriminación*.

across all levels of government.

All the work that Mexico has done for gender parity in the government and with the certifications are seemingly done to achieve gender equality. But, all of this effort means nothing if it does not translate into reality, specifically for low-income women and men. These reforms and standards mean nothing if the government itself does not make them a priority.

## B. Private Sector and CSO Initiatives

### a. Training and Capacity Building in the Workplace

To realize gender equality within the workplace, some private sector actors have stepped up to increase women’s inclusion through training and capacity building programs. One such initiative is by Caterpillar Inc. Caterpillar partnered with the United Way to determine the greatest community needs for employees and their families. Their research found that education was an area highlighted as a need by the local communities in which they worked. As a result, Caterpillar began investing in universities, with a focus on promoting STEM careers and leadership and innovation training for women.<sup>420</sup> Another initiative targeted at women is the “Educate Girls to Change the World” which has two main goals. The first is to promote education to break the cycle of poverty by providing training on sexual health, how to prevent pregnancy, and gender violence. The second goal is to encourage girls to pursue careers in STEM.<sup>421</sup>

Caterpillar also created employer resource groups (ERGs). They established ERGs in: the Women’s Initiative Network, to empower women in leadership; Young Professionals, which focuses on career planning and networking for young professionals joining the team; and Maquiladora Connection, which focuses on inclusion and diversity initiatives.<sup>422</sup> The ERG has created a special chapter focused on women in leadership and women’s work-life balance to address obsta-

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420 Representative from Caterpillar Inc. in discussion with the authors, January 2019.

421 Representative from Caterpillar Inc. in discussion with the authors, January 2019.

422 Representative from Caterpillar Inc. in discussion with the authors, January 2019.



cles to advancement and to provide overall support for career growth. This support includes training, tuition reimbursement for women to pursue their Master's degrees, and guidance on how these women could advance their careers.<sup>423</sup>

Additionally, in the *maquiladora* sector, Caterpillar offers special training on harassment and how to report it, as well as workplace flexibility for a better work-life balance. They also provide special training for men in the workplace to help them recognize their subconscious gender bias. Since this type of awareness is not part of the culture, they have found the training helpful in reducing gender-based violence in the workplace.<sup>424</sup> Caterpillar also actively invests in intentional succession planning for leadership positions. To better incorporate women in leadership, they identify and provide training and education to ensure that women are prepared to take over leadership positions.<sup>425</sup> As a result, the company has come closer to reaching gender parity, with 45 percent of the employees being female. Moreover, women hold 27 percent of the company's leadership positions in *maquiladoras*.<sup>426</sup>

### b. Child Care in the Workplace

Another focus area for private sector actors in the *maquiladoras* is on child care. As women workers have limited time to care for themselves, CFO Maquiladoras has focused on developing strategies to empower and educate women, to help them better compete with their male counterparts. A key part of ensuring the success of their meetings is a guaranteed access to proper child care.<sup>427</sup> Since the burden of caring for children often falls on women, these women are unable to participate without access to child care. Similarly, Caterpillar has

also worked to provide child care during training and other activities to allow women the ability to participate in events that will help them increase their upward mobility.<sup>428</sup>

### c. Financial Literacy Training

Across Mexico, women can find it difficult to access formal financial services and educational training. To help combat this issue, NGOs have played an active role in building the capacity of these women. One NGO, Pro Mujer, provides support to over 47,000 low-income women and provides access to microcredit services and financial literacy workshops, to enable them to become financially independent.

## C. Diversity and Inclusion Initiatives

UN Women has also created outreach programs and diversity inclusion initiatives. One of their pillar programs is UN Women's Second Chance Education and Vocational Learning Programme, which targets vulnerable women and girls who have missed out on an education. It uses technology to provide women with access to learning resources and provides pathways to employment and entrepreneurship opportunities. Through these resources, the goal is to combat the mentality and cultural notion that women do not need to or cannot work.<sup>429</sup> The program puts vulnerable women back in school and provides them certifications and subsequently connects them with the private sector to open up their career opportunities.<sup>430</sup> Worldwide, the program has impacted over nine million women.<sup>431</sup> This program also works at the national level to enhance gender-balance policies and fiscal changes, to ensure these advancements in women's empowerment are sustained.

423 Representative from Caterpillar Inc. in discussion with the authors, January 2019.

424 Representative from Caterpillar Inc. in discussion with the authors, January 2019.

425 Representative from Caterpillar Inc. in discussion with the authors, January 2019.

426 Representative from Caterpillar Inc. in discussion with the authors, January 2019.

427 Julia Quiñonez (Coordinator, Comité Fronterizo de Obre-r@s Maquiladoras, CFO Maquiladoras), in discussion with the authors, January 2019.

428 Representative from Caterpillar Inc. in discussion with the authors, January 2019.

429 Juliette Bonnafé (Program Specialist, UN Women Mexico) in discussion with the authors January 2019.

430 Juliette Bonnafé (Program Specialist, UN Women Mexico) in discussion with the authors January 2019.

431 Juliette Bonnafé (Program Specialist, UN Women Mexico) in discussion with the authors January 2019.

# PART VII

## Conclusion

The intersection of free trade and the livelihoods of women working in Mexico offers several lessons learned. It illustrates the importance of the need for a gender perspective in free trade agreements, as well as the necessity of consultations with diverse populations and human rights impact assessments prior to signing on to an agreement. Moreover, this case highlights the need for national governments to examine and address underlying systemic conditions that impact women's labor participation, working conditions, wages, and access to opportunities. Ultimately, NAFTA was both a win and a loss for women working in Mexico, when it could have been closer to a win-win situation for this group.

With trade liberalization came employment opportunities for women in the *maquiladora* sector. Although the economy changed, societal norms remained such that employed women were still expected to be primary caregivers, resulting in the double shift. The double shift is not only an enormous burden in and of itself, but it also limits women's opportunities for advancement—which require time, energy, and access.

Other forms of gender-based discrimination, including gender-based violence, also threaten the landscape of women in the workforce, from wage discrimination, to harassment, to the motherhood penalty and more. Although Mexico has a progressive legal regime on a number of issues, the lack of capacity or willingness to enforce the law remains a barrier to realizing the rights of working women. The private sector has stepped in to partially fill the labor protection gap through the use of social compliance auditing firms. However, the private sector is no substitute for state enforcement.

The new Mexican administration offers both hope and challenges for the rights of working women. Recently, President AMLO passed a labor reform bill that could be a gamechanger for workers in Mexico. The bill provides for the right to collectively bargain through independent labor unions, which could lead to fairer wages and better working conditions. This would be particularly advantageous for women who are disproportionately stuck in lower wage jobs. However, there is another initiative that would undermine the general human rights landscape in Mexico. AMLO has been critical of civil society, an important partner for the realization of rights. Going so far as to issue an internal cabinet memo banning funding for civil society, and instead providing it directly to beneficiaries. This policy fails to recognize the essential role that civil society plays in assessing needs, providing information, and giving support. As such, the AMLO administration oscillates between promise and concern for working women in Mexico.

As the possibility of the USMCA coming into force inches closer, it is an important time for Mexico to reflect on the combined effects of free trade, rule of law, and deeply ingrained cultural norms on the rights of working women. Gender should be at the forefront of a national dialogue, as women's labor participation is not only important for the rights of women, but also necessary for the collective good. There is a positive relationship between women's labor participation and economic growth. To fully realize the potential of women's labor participation, women need access to the same opportunities and pay as men. They need to be able to work free of harassment and discrimination and to travel to work without fear of violence. Women also need to know that there is oversight and effective remedies should an employer infringe upon their rights. Finally, there needs to be a reduction in gender inequality in household chores and caretaking. The double shift is an unjust and inefficient burden on women in Mexico and around the world, and every effort should be made to lighten the load.





ALL WE  
WANT IS  
EQUAITY

# PART VIII

## Policy Recommendations

### A. Short Term

**1. Extend and enforce paid maternity and paternity leave:** The right to maternity leave in Mexico is below the OECD average.<sup>1</sup> This exacerbates gender-issues in Mexico. Women require time to recover after labor and to breastfeed their children. For this reason, extending paid maternity leave for women to the OECD average can have a positive impact on decreasing gender disparity in the labor force in Mexico. For instance, insufficient paid maternity leave can lead women to either go back to work as quickly as possible after childbirth or decide to stay home and out of the workforce. Women should not have to choose between one and the other, especially when paid maternity leave is already below the OECD average. The short time for paid maternity leave impacts the poor the most because households might rely on the mother's income. Providing a longer maternity leave can help mothers to fully recover and better provide for their children. Additionally, a longer paid maternity leave can increase the likelihood that women will return to the formal labor force. Paternity leave should also be extended. This extension will help decrease the instances of discrimination against hiring women, especially pregnant women. Extending the length of paternal leave will also reduce the traditional role of women as caregivers. It would further encourage men to take on some of the caregiver responsibilities, as well as destigmatize the role of men in child rearing. While the Federal Labor Law has stipulations for both paid maternity and paternity leave, for this policy to be effective it is critical that the government enforces and ensures that every sector adheres to the requirement.

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<sup>1</sup> OECD, "Length of maternity leave, parental leave and paid-specific leave—maternity leave, 2016" accessed on May 10, 2019. <https://www.oecd.org/gender/data/length-of-maternity-leave-parental-leave-and-paid-father-specific-leave.htm>



**2. Increasing fines for companies failing to enroll employees in the Social Security System:** Per the Constitution, social security benefits are a right of any worker. However, companies routinely fail to enroll employees in social security to avoid paying employer contributions. Companies and organizations should face higher sanctions for not enrolling their employees in the system, as failure to register restricts these benefits. Employer contributions are high while penalties for failing to enroll employees are comparatively low. Consequently, some companies can pay off the fines; thus, these penalties need to be higher and include more stipulations to improve deterrence. Enforcement of enrolling employees in social security is also problematic. More labor inspectors are needed to ensure maquiladora employees are enrolled in the social security system.

**3. Increase the number of labor inspectors and transparency regarding said number:** As highlighted throughout this report, a major challenge in ensuring that the rights of women are protected in the workplace is the fact that Mexico has a very low number of labor inspectors relative to the number of workplaces to be inspected, resulting in less-frequent and less in-depth labor inspections. The Mexican federal government plans to increase the number of labor inspectors in the next several years, which is a positive step towards better protection of labor rights. However, the federal government's plan must be more holistic than simply hiring more inspectors.

The Mexican federal, state, and local governments should work cooperatively to make a conscious effort to increase the number of labor inspectors employed and working, to increase the number of labor inspections carried out each year. All three levels of government must ensure that these labor inspectors are trained adequately and that there is a gender perspective to these trainings, so that labor inspectors are aware of the different risks that women face versus men. The Mexican government should also increase the transparency regarding the number of labor inspectors that it employs. This data is not available online at the federal level, nor is the data publicly available online from international organizations such as the International Labour Organization. As Mexico works to increase its number of labor inspectors, it should ensure that this information

is publicly available and easily accessible in order to create full transparency regarding its progress in increasing the total number of labor inspectors.

**4. Create mechanisms to identify indirect gender-based discrimination at the workplace:** Currently, Mexico does not have any mechanisms to detect and prosecute indirect discrimination in the workplace—despite indirect discrimination being prohibited. This is a critical issue in Mexico because without a mechanism to detect and punish indirect gender discrimination in the workplace, gender-based discriminations will continue to occur and authorities will not be able to efficiently assess gender-based issues in the workplace. One suggestion is creating an annual national survey to be collected from employers in the private and public sector containing data on their workforce, such as disaggregated data by sex and race. Through the creation of this national survey, it will be possible to monitor and identify patterns of discrimination in the workplace, and more efficiently remedy these issues. The body responsible for the survey should also have the legal authority to prosecute employers who discriminate. An example of the implementation of a similar survey is the *Survey to the Equal Employment Opportunity Commission (EEOC)* implemented in the United States. In the United States, the EEOC also has the authority to sue employers who discriminate.<sup>2</sup>

**5. Create programs to inform working women in Mexico about their rights and available restitution mechanisms:** In Mexico, many working women are unaware of the government protection mechanisms that safeguard them against workplace discrimination. Even if women are aware, they sometimes fear retribution for reporting their bosses or coworkers. With more women gaining knowledge of their legal rights and increased employer awareness of these trainings, reporting of discrimination will most likely increase.

For this reason, the Mexican government should develop targeted community awareness and outreach programs to ensure women are cognizant of their workplace rights. These comprehensive programs should include training sessions covering available reporting mechanisms for labor violations, as well as informa-

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2 Área de Derechos Sexuales y Reproductivos, “Shadow Report on employment discrimination against women in Mexico”.



tion pertaining to local, state, and federal processes for reporting.

Furthermore, the government should provide the necessary resources and funding to NGOs and civil society for aiding women in this reporting process. It is important to note that coordination with civil society is a policy currently under threat from the AMLO government. It is critical that the government engage and support these groups to improve the lives of working women.

**6. Include gender sensitivity training for law enforcement:** Often, victims of gender-based violence or domestic violence do not report the crimes committed against them due to fear embedded in cultural stigma. One method with which the government can encourage victims to report their experience is gender sensitivity training for law enforcement. The federal government, in conjunction with state and local governments, should not only educate law enforcement on the rights of women, and specifically women workers, but should also oblige all levels of law enforcement to attend biannual gender sensitivity or mainstreaming training sessions. It is important to note that the Gender Violence Alert System, referenced earlier in the report, has encouraged some states to carry out this type of training for law enforcement. That being said, more needs to be done at a federal level to ensure that these practices are part of an overarching policy across the country.

The government can look to international organizations, such as UNICEF, UN Women, or ActionAid, for tools in implementing these types of programs. For example, these organizations have already been operating in Tanzania to increase the number of female police officers and to establish gender-based violence units.<sup>3</sup> The purpose of these should be to equip law enforcement with the tools to properly aid women who are victims of gender-based violence or harassment, either at home or the workplace. The goal of gender sensi-

3 Rebecca Grant, "How to Get Women to Trust the Police? 'Gender' Desks," *NPR*, August, 15, 2018, <https://www.npr.org/sections/goatsandsoda/2018/08/15/638872938/how-to-get-women-to-trust-the-police-gender-desks>.

zation programs in law enforcement and the inclusion of more female police officers, is to encourage women to report cases of domestic violence, which has proven to be true in the United States.<sup>4</sup> Women should be able to seek out local enforcement who do not perpetuate existing gender stereotypes, while law enforcement should be equipped to properly handle cases involving gender-based violence.

## 7. Implement strategies to mitigate the adverse effects of trade agreements on people's ability to enjoy their economic, social, and cultural rights:

Free trade is a tool to improve the aggregate economic well-being of a country; however, it is well-known that these aggregate gains will not necessarily be evenly distributed. Instead of entering trade agreements under the assumption that the entire economy will be better off, the government must engage in a more nuanced approach that takes into account the situations of vulnerable groups, such as women.

One such tool that has been developed in an attempt to reduce the risks of future inconsistencies between trade-related and human rights-related goals is the 'Human Rights Impact Assessment.' These assessments identify and analyze (and, in some cases, monitor over time) "the impact of different policies...on the ability of people to enjoy their human rights."<sup>5</sup> Though these tools may be unable to predict causally the adverse effects of trade agreements, they add value by drawing attention to issues that might otherwise go unnoticed, "such as impacts that are discriminatory between men and women."<sup>6</sup>

The *ex ante* assessment of the Africa Continental Free Trade Area provides a notable example of this process in practice. The assessment team paid particular

4 Amalia R Miller and Carmit Segal, "Do Female Officers Improve Law Enforcement Quality? Effects on Crime Reporting and Domestic Violence," *The Review of Economic Studies*, September 18, 2018, <https://doi.org/10.1093/restud/rdy051>.

5 Jennifer Zerk, "Human Rights Impact Assessment of Trade Agreements." *Chatham House*, 2019. <https://www.chatham-house.org/sites/default/files/2019-02-18HumanRightsTradeAgreements.pdf>.

6 Zerk, "Human Rights Impact".

attention to groups identified as most vulnerable to the effects of the trade agreement (e.g. women, young people, and rural food producers). They proceeded to pinpoint those human rights which are most important for trade in the African context, paying particular attention to the economic sectors most closely linked to these rights and ensuring that relevant stakeholders were invited to participate in the negotiation process. The team openly acknowledged in their recommendations the difficulty of establishing the causal link between trade and human rights. Still, they were able to provide several suggestions for the negotiators.<sup>7</sup> As countries are still in the process of ratification, it is too early to draw conclusions about this assessment's effectiveness; however, it provides an interesting example of how the human rights impact assessment tool has been conducted and contextualized.<sup>8</sup> Ultimately, no matter the tool used, Mexico must not only identify, but also institute provisions that protect those most vulnerable from trade liberalization.

## B. Long Term

**1. Establish gender-sensitization programs in schools:** Gender stereotypes are developed and ingrained at an early age. This phenomenon sustains the prevalent *machismo* culture in Mexico, allowing for gender stereotypes to be perpetuated. Thus, educational materials and scholarly activities must emphasize the promotion of gender equality, from early childhood development to higher education.

This curriculum should include teaching children at an early age about the concept of consent, as well as emphasizing that violence against women is never acceptable. Textbooks in schools should continue to be rewritten to avoid sexism and discrimination, and to ensure that gender stereotypes are not perpetuated

through educational materials. Some progress has already been made under *Programa Sectorial de Educacion* 2013-2018, but Mexico needs to keep this focus until gender sensitization in textbooks is reached.

Furthermore, teachers should have mandatory training in gender sensitivity. This training should be available for the wider community as well. Additionally, the promotion of young girls in STEM classes should take priority, as they are often discouraged from these fields, with additional funds directed toward programs which encourage girls to participate in these fields.

**2. Increase the participation of diverse stakeholders in trade negotiations and increase transparency and dissemination mechanisms when entering negotiations of new trade agreements:** Recalling the political history of Mexico described above, in 1994 Mexico did not yet have free and fair elections. Therefore, the political elites ratified NAFTA in a top-down fashion which did not first engage stakeholders in the negotiation process or explain the benefits that NAFTA would have on the Mexican economy. In the long term, Mexico needs to make a stronger effort to include a diverse set of stakeholders in the trade negotiation process and establish dialogue mechanisms through which the government will communicate the fundamental benefits and drawbacks of what the trade agreement ratification will mean for the economy. Because every citizen in Mexico is technically a stakeholder in a trade agreement, it will be a long process to establish comprehensive, permanent consultative structures.

Canada can serve as an example of a successful strategy, as they invited all interested Canadians to submit, via post or e-mail, their thoughts on the renegotiation of NAFTA before they even began USMCA negotiations with the U.S. and Mexico.<sup>9</sup> No matter what form the consultation and dissemination process takes, it will be critical for cross-cutting issues, such as gender, class, race, and ethnicity, to have a substantial contribution to the discussion.

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7 United Nations Economic Commission for Africa (UNECA) and Friedrich Ebert Stiftung (FES), *The Continental Free Trade Area (CFTA) in Africa – A Human Rights Perspective*, July 2017, [https://www.uneca.org/sites/default/files/Publication-Files/2017\\_07\\_cfta\\_hria\\_publication\\_eng.pdf](https://www.uneca.org/sites/default/files/Publication-Files/2017_07_cfta_hria_publication_eng.pdf).

8 Shoshana Kede, "Africa free trade agreement gets last ratification from Gambia," *African Business*, April 2, 2019, <https://africanbusinessmagazine.com/region/africa-free-trade-agreement-gets-last-ratification-from-gambia/>.

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9 "Consultations on the renegotiation and modernization of the North American Free Trade Agreement," Government of Canada, Government Notices, June 3, 2017, <http://gazette.gc.ca/rp-pr/p1/2017/2017-06-03/html/notice-avis-eng.html#na8>.

**3. Apply a gender lens and explicit gender language in future trade agreements:** The rights, provisions, and language included in trade agreements are important especially to women and other vulnerable groups. Lowering barriers to trade has long been assumed to expand economic opportunities to women as well as improve women's wellbeing in cultural, social, and political contexts. However, given the presented case of Mexico, these intentions and beliefs do not necessarily hold. Without the inclusion of explicit gendered language and provisions, women will continue to be left behind as trade barriers are lowered. Currently, few regional trade agreements give explicit attention to gender.

In accordance with the new administration's development plan to include gender diversity and the gender perspective in Mexico, the country should use a gender lens and include explicitly gendered language when negotiating future trade agreements to ensure that benefits from trade are evenly divided across genders. The incorporation of a gender perspective will promote inclusive economic growth throughout Mexico's economy. By including gendered language in future trade agreements, the social and economic vulnerabilities faced by women would be reduced and addressed. Thus, it allows Mexico to tap into the potential of women workers to actively contribute to economic growth, which as of now, is grossly underutilized in Mexico.

**4. Increase female leadership in unions:** The current union system, especially *Centrals*, are primarily led by men despite relatively equal rates of gender participation in unions. Leadership of unions should reflect participation and the current Mexican labor market, which includes significant participation of women workers. Without gender parity in union leadership, the wage gap and gender discrimination will continue to occur in Mexico. Therefore, augmenting female participation and leadership must be a goal of all unions in Mexico. This increase could be achieved by creating female-led committees on women's participation and leadership in all government associated Unions. These women's committees in *Centrals* should provide training in leadership skills and offer mentoring as well as networking opportunities for women.

**5. Continue efforts of gender mainstreaming by incorporating a gender perspective into all legal, economic, and political frameworks at every level of government:** This mainstreaming should be done to combat the existing structural disadvantage that women face, and to end the government's replication of gender stereotypes that lead to exclusion and discrimination. Mainstreaming goes beyond using inclusive language and increasing female representation—it means that gender issues become central to all policies and practices. In this way, every single challenge should be examined through a gender lens to address the issues that create an uneven playing field for women and to promote a stronger degree of sensitivity regarding the structural inequalities that women face across all levels of government and society.

As mentioned previously, Mexico has already made strides toward gender mainstreaming through its 2014-2018 NAP, which includes several provisions on gender inclusivity. To this end, new policies should complement existing legal protections with a restructuring of every aspect of government, including general laws and policies, budgets, planning, and research, as well as international treaties. Furthermore, the government must strengthen the gender perspective in its data collection processes and should seek the input of women of all races and socioeconomic backgrounds to ensure that policies reflect the intersectional nature of being a woman in Mexico. Lastly, the government must understand the end goal is not gender mainstreaming itself, but rather to use mainstreaming as a strategy to build an institutional structure that promotes gender equality and makes it a central tenant of all its activities.

## C. Private Sector Recommendations

**1. Multinational corporations should increase use of third-party social compliance auditing firms to monitor conditions at their Mexican factories and suppliers:** To supplement the aforementioned public policy recommendations, there are concrete actions that MNCs and other private sector actors can take to better protect the rights of women workers within the formal sector. Since the labor enforcement capacity of the state auditors will likely remain constrained in



the near-term, it is imperative that MNCs should take steps to improve the monitoring and enforcement of social compliance standards at their Mexican suppliers. MNCs should partner with third-party social compliance auditing firms to ensure that violations of labor protections in Mexico are swiftly identified and remediated, and companies should seek continual worker engagement in the improvement of labor conditions through worker voice tools and effective grievance mechanisms.

**2. Institute corporate governance measures to promote gender balance in management and prevent sexual harassment:** Beyond protecting specified labor rights through observation of existing social compliance standards, private sector corporations should institute policies to correct the gender imbalance in factory management roles and reduce sexual harassment at workplaces.

For example, a representative from Caterpillar, the world's largest construction equipment manufacturer, explained the company's relatively broad push to create a workplace more amenable to the needs and advancement of women. This push includes reinforcement of human resources policies on rooting out sexual harassment in the workplace, adoption of policies to enable greater work schedule flexibility and a special employee group that guides women hoping to advance in their careers at Caterpillar.<sup>10</sup> While Caterpillar seems to be the only company publicly reporting these types of activities at its Mexican facilities, its adoption of these policies and programs offers a blueprint for the pursuit of greater gender equity within Mexican facilities.

**3. Ensure the safety and security of workers traveling to and from work:** Mexico struggles with a weak rule of law, which, as highlighted in this report, permeates many aspects of daily life for Mexican women, including travel to and from work. Other actors, besides the Mexican government, must step in to help to mitigate the issue, which affects the ability of many Mexican women to maintain work outside of the domestic sphere. When citizens cannot travel to work because of safety concerns, not only does this have an effect

on the ability of women to exercise their rights, but it also negatively affects the productivity of the country, meaning missed opportunities for GDP growth.

This is a space in which private companies can play a large role in helping to increase the well-being of their laborers. Private sector companies operating in Mexico, especially those operating in Northern Mexico and the border regions, should be aware of the danger that their workers might face on the way to and home from work. Private sector companies should take steps to ensure the safety of their workers during their travels to and from work by exploring options such as arranging company transport for workers. Companies should organize focus groups or conduct surveys with employees to determine the best way that they can assist their employees with safe transportation to and from the workplace. Special emphasis should be placed on the safety of female employees, as they are often at higher risk than their male counterparts when it comes to transportation.

Such efforts could also benefit companies themselves, in a myriad of ways. By helping to guarantee the safety of their employees to and from work sites, private companies will build better relationships with the communities in which they operate. Companies may find themselves with larger employee applicant pools from which to select employees. Further, by demonstrating this sense of regard towards their employees' safety, companies may build greater trust with their employees, which may lead to a higher retention of workers.

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<sup>10</sup> Representative from Caterpillar Inc. in discussion with the authors, January 2019.

# Figure 1:

## Border Zone Minimum Wage Hike Affects 43 Municipalities



Source: “Mexico News Daily.” “Border zone minimum wage hike affects 43 municipalities.” *Mexico News Daily*. 19 December 2018. <https://mexiconewsdaily.com/news/border-zone-minimum-wage-hike-affects-43-municipalities/>.





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